

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.159 OF 2019

- 1]

Mr. Vishal Vijay Vishwasrao @ Vishal Rao
Age : 29 years, occ : Politician
R/at : B/304, Thakur Apartment,
Lokmanya Nagar, Thane (West)
Thane – 400 606

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- 2]

Mr. Vikrant Prakash Shinde
Age : 30 years, occ : Business
R/at : 1/23, Shraddha Rahivashi Sangh,
G D Ambedkar Marg, Near Abhyudaya Bank,
Parel Village, Parel, Mumbai

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- 3]

Mr. Vishwanath Rama Godse
Age : 26 years, occ : Worker
R/at : Room No.59, Ahemdabad Street
P D'mello road, Behind Vyapar Bhavan
Zopadpatti Masjid Bunder, Mumbai – 09

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- 4]

Mr. Virendra Jagmohan Nishad
Age : 38 years, Occ : Worker
R/at : Gala No.25, R one A,
Subhash Nagar, MHADA Colony,
Subhash Nagar, Nahur-(West)
Mumbai – 400 078

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- 5]

Mr. Pratik Sharad Mhetre
Age : 23 years, Occ : Student
R/at Sakhar Galli Zhopadpatti,
Karnak Siding Road, Near Lokhand Jettha
Masjid Bunder, Mumbai – 400 009

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- Petitioners.

Versus

- 1]

The State of Maharashtra
(At the instance of MRA Marg P.S)

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- 2]

Mr. Pradyumna Dhananjay Kulkarni

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Age : 41 years, Occ : Service]
R/at : C-402, Bhagirathi Pride C.H.S.,]
Near Nisarg Udyaan No.2,]
Behind Govind Dham Complex,]..... Respondents/
Badlapur, Dist. Thane] First Informant.

Mr. B R Samel i/by Rajeev Sawant & Associates for the Petitioners.
Mrs. M H Mhatre, APP for Respondent/State.
Mr. Pranav Badheka a/w Mr. Ryan S, and Mr. Niaranjan Pachupate i/by Mr.
Prashant Pawar for Respondent No.2.
Respondent No.2 present through video conferencing.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 15th JULY 2021

JUDGMENT : (PER S. S. SHINDE, J)

1 At the outset the learned counsel appearing for the Petitioners seeks leave to amend so as to take exception to the charge-sheet filed against the Petitioners before the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai. Leave granted. Amendment to be carried out forthwith. Amended copy of the Petition be placed on record after serving the copy of the same on the other side.

2 Rule. Rule made returnable forthwith and heard with the consent of the learned counsel for the parties.

3 By this Writ Petition the Petitioners seek relief of quashing and setting aside the charge-sheet being CC No.44/PW/2019 pending before the

learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai arising out of FIR No.264 of 2018 registered with MRA Marg Police Station for the offences punishable under Sections 143, 147, 148, 452, 427, 336, 504 and 506(2) of the Indian Penal Code against the Petitioners registered at the instance of Respondent No.2 herein.

4 The learned counsel appearing for the Petitioners and the learned counsel appearing for the 2nd Respondent jointly submit that the parties have amicably settled the dispute and to that effect Respondent No.2 has filed his affidavit as also the consent terms dated 25th March 2019 duly signed by the parties and their respective advocates have been placed on record before this Court.

5 It is submitted by the learned counsel appearing for the Respondent No.2 that Respondent No.2 is the authorized representative of GAC Shipping (India) Pvt. Ltd. and he has authorized to represent the said company for withdrawing the impugned FIR. It is further submitted that in view of the amicable settlement arrived at between the parties, the Respondent No.2 has given his No Objection for quashing the impugned FIR. The relevant extracts of the minutes of the meeting of the board of directions of GAC (India) Pvt. Ltd. held on 25th October 2018 are placed on record at Exhibit-A.

6 The Respondent No.2 is present before this Court through video conferencing. The learned counsel appearing for the Respondent No.2 identified the Respondent No.2. When we interacted with him, he stated that he has been authorized by GAC Shipping India Pvt. Ltd. vide its board resolution dated 25.10.2018 to represent and withdraw the impugned FIR. He further stated that it is their voluntary act to enter into the settlement. He further stated that they have no objection for quashing the proceedings arising out of the impugned FIR.

7 In support of his aforesaid statements, the Respondent No.2 has filed his affidavit. The Respondent No.2 in paragraphs 1 to 3 of his affidavit has stated thus :-

- “1 I say that, I am the authorised representative of GAC Shipping India Pvt. Ltd. am authorized by GAC Shipping India Pvt. Ltd, vide its board resolution dated 25.10.2018 to represent and withdraw the FIR No.264 of 2018. A copy of the board resolution dated 25.10.2018 is annexed hereto and marked as “Exhibit-A”. I say that I being the authorized representative of GAC Shipping India Pvt. Ltd, am executing the present affidavit for quashing of the FIR No.264 of 2018 registered registered with M.R.A. Marg Police Station, Mumbai for committing offences under section 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code is lodged at my instance.
- 2 I say that as the dispute between the parties have been settled amicably, hence I have NO OBJECTION to quash the FIR No.264 of 2018 registered under section 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal

Code at my instance by the M.R.A. Marg Police Station, Mumbai on 11.10.2018.

- 3 *I say that I am executing the present Affidavit without any duress, coercion to the limited extent of quashing of the FIR No.264 of 2018.”*

8 The learned counsel appearing for the parties have also placed on record the consent terms arrived at between the parties. Paragraphs 1 to 5 of the said consent terms are relevant and they are re-produced herein under for ready reference :-

- “1 *The Petitioner No.1 to 5 are arraigned as Accused in FIR No.264 of 2018 registered by the M.R. Marg Police Station, Mumbai under Section 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code at the instance of the Respondent No.2.*
- 2 *That, during the pendency of the above said FIR the Petitioner No.1 to 5 approached the Respondent No.2 and made a representation for amicable settlement of the above said matter as the said incident occurred at the instance because of their misunderstanding and assured and confirmed that they will not repeat the same. In view of this assurance and confirmation requested to consider their proposal for amicable settlement.*
- 3 *The Respondent No.2 in view of the said confirmation and assurance that they will not commit such offence considered the proposal for amicable settlement given by the Petitioner No.1 to 5 and decided to consent for amicable settlement and give NO OBJECTION for quashing of the FIR No.264 of 2018 registered by the M.R. Marg Police Station, Mumbai under Section 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code at the instance of the Respondent No.2.*
- 4 *The Respondent N.2 has executed the affidavit giving NO*

OBJECTION for quashing of the FIR No.264 of 2018 registered by the M.R. Marg Police Station, Mumbai under Section 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code at the instance of the Respondent No.2.

5 *The Respondent No.2 stated that they have NO OBJECTION for quashing of the FIR No.264 of 2018 registered by the M.R. Marg Police Station, Mumbai under Section 143, 147, 148, 452, 427, 336, 504, 506(2) of IPC unconditionally with mutual consent.”*

9 The learned APP appearing for the Respondent/State, on instructions, submits that there are no criminal antecedents against the present Petitioners.

10 We have perused the material on record. In view of the settlement arrived at between the parties, no fruitful purpose will be served by continuing the further proceedings i.e. C.C. No.44/PW/2019 pending on the file of learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai arising out of FIR No.264 of 2018 registered by the M.R. A Marg Police Station, Mumbai under Sections 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code at the instance of the Respondent No.2.

11 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of

1 2012 (10) SCC 303

quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

12 In the light of discussion in foregoing paragraphs, it is abundantly clear that the 2nd Respondent is not going to support the allegations made in the impugned FIR and further continuation of proceedings i.e. C.C. No.44/PW/2019 pending on the file of learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai arising out of FIR No.264 of 2018 registered by the M.R.A. Marg Police Station, Mumbai under Sections 143, 147, 148, 452, 427, 336, 504, 506(2) of Indian Penal Code at the instance of the Respondent No.2

would tantamount to the abuse of the process of Court. Since the Respondent No.2 is not going to support the allegations in the FIR the chances of conviction of the Petitioners would be remote and bleak. In order to prevent the abuse of the process of Court and to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and the Charge-sheet. In that view of the matter, the Writ Petition deserves to be allowed and, the same is allowed in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court may be pleased to quash and set aside C.C. No.44/PW/2019 pending before Ld. Metropolitan Magistrate, (16th Court), Ballard Pier, arising out of the FIR No.264 of 2018 registered with the M.R.A Marg Police Station, for the alleged offences punishable u/sec.143, 147, 148, 452, 427, 336, 504, 506(2) of IPC against the Petitioner registered at the instance of Respondent No.2/First Informant on such terms and conditions as this Hon’ble Court may deem fit to grant in the circumstances of the case.

Rule made absolute to the above extent. The Writ Petition stands disposed of accordingly.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]