

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.436 OF 2021

Nasir Jamal Shaikh]
Aged : 63 years, Occ : Business]
Residing at Summer Queen Bldg.]
Fourth Floor, Arthur Bunder Road,]
Colaba, Mumbai]..... Petitioner

Versus

1] The State of Maharashtra]
At the instance of Sr. Inspector of]
Police, L T Marg Police Station]
Vide their C.R. No.353 of 2019]
(Corresponding M.E.C.R. No.6 of]
2019)]
2] Abu Asim Azmi]
Aged : 64 years, Occ : Business]
Residing at Sentinel House,]
Fourth Floor, H N Azmi Marg,]..... Respondents
Colaba, Mumbai] (Orig.Complainant)

Mr. Sudeep Pasbola i/by Mr. Karl P Rustomkhan for the Petitioner.
Mr. J P Yagnik, APP for the Respondent No.1/State.
Mr. Mubin Solkar a/w Mr. Zarak Khan a.w Mr. Saif Shah i/by Mr. Aamir
Sopariwala for Respondent N.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 11th March 2021
Pronounced on : 22nd March 2021

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

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

2 By this Writ Petition the Petitioner seeks the following substantial relief :-

“(b) This Hon’ble Court be pleased to quash and set aside the Criminal Case No.2800144/SW of 2019 pending in the file of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, arising out of C.R. No.353 of 2019 (Corresponding M.E.C.R. No.6 of 2019) registered with L T Marg Police Station and all other proceedings arising out of the said C. R.”

3 The Petitioner herein is arraigned as an accused in the FIR bearing C.R. No.353 of 2019 (Corresponding M.E.C.R. No.6 of 2019) registered with L T Marg Police Station, Mumbai on 20/11/2019 for the offences punishable under Sections 463, 464, 466, 468, 469, 470, 471, 473, 205, 209, 415, 416, 418, 420, 421, 424, 120-A and 465 of the Indian Penal Code at the instant of Respondent No.2 herein.

4 It is the case of the Petitioner that he and the 2nd Respondents were the partners in several businesses and also jointly owned properties. Respondent No.2 herein lodged a complaint with L T Marg Police Station against the Petitioner for committing the offence of forgery, impersonation, criminal breach of trust and cheating by making false representation before the Small Causes Court. But the police did not take any action on the same.

Therefore Respondent No.2 approached the Court of the learned Metropolitan Magistrate, Esplanade, Mumbai interalia for taking cognizance of the said offence. The said prayer came to be granted, and consequently CR No.353 of 2019 came to be registered against the Petitioner.

5 It is alleged by the 2nd Respondent in the said FIR that the Petitioner and the 2nd Respondent were the partners. It is alleged that the Petitioner was not disclosing full and correct information to the 2nd Respondent, and carried out various transactions behind his back and without his knowledge. One restaurant by name Pandora Box in the Gala No.14 was run by the Petitioner and he kept all the income earned from the said restaurant with him. It is also alleged by the 2nd Respondent that the Petitioner in collusion with Suresh Nagada and M/s. Industrial Traders filed proceedings before Small Causes Court and submitted bogus documents by forging the signature of Respondent No.2 and thereby cheated him to the tune of Rs.5 Crores.

6 It is submitted that the Petitioner and Respondent No.2 were business partners. Due to some misunderstandings certain disputes arose between them, and therefore, complaints and counter complaints were lodged against each other. It is also submitted that the said misunderstanding is now resolved amicably to the satisfaction of both the parties. It is also submitted

that the disputes between the Petitioner and the 2nd Respondent are now amicably settled. They have entered into Consent Terms on 04/11/2020 in Commercial Suit No.447 of 2019. The copy of the said Consent Terms is placed on record at Exhibit C on page 57 of the writ paperbook. Under the said Consent Terms it has been agreed between the parties that parties shall withdraw all the allegations made against each other and also amicably withdraw and/or get quashed the present complaint and other criminal cases.

7 The learned counsel appearing for the Petitioners submits that, without entering upon the merits of the case, this Court may allow this Petition on the basis of the settlement arrived at between parties.

8 The learned counsel appearing for the 2nd Respondent submitted that the parties have amicably settled their disputes and the Respondent No.2 does not intend to prosecute the Petitioner and therefore, the 2nd Respondent is willing to give his consent for quashment of the impugned proceedings.

9 The 2nd Respondent was present before this Court on 11/03/2021 when the matter was heard. He was identified by his advocate. When we interacted with him, he stated that both the parties have amicably settled the disputes and that they have filed consent terms in the Commercial Suit. He further stated that he has filed his affidavit on his own will, without any

coercion or pressure. It is stated therein that he has no objection to the prayer of the Petitioner being granted.

10 The relevant paragraphs of the said consent terms are paragraphs 21 to 26 which for the purpose of ready reference are reproduced herein under:-

“Bake House Building

21 Shop No.14, Ground Floor, New Bake House, Maharashtra Chamber of Commerce Lane, Fort, Mumbai – 400023 admeasuring 1100 sq.ft. Carpet area. Plaintiff No.1 agrees to release and transfer all his right, title and interest in the said shop No.14 to Defendant No.1 upon (I) the quashing of all criminal complaints mentioned herein, and (ii) the withdrawal by Defendant No.1 of the complaints made by him to the MCGM, BEST and other authorities against the Plaintiffs and their various businesses. Plaintiff No.1 shall arrange to hand over all the documents and other court proceeding papers to Defendant No.1 of Shop No.14 along with vacant & peaceful possession thereof within 60 days from execution of these Consent Terms.

22 It is hereby agreed declared and confirmed that Defendant No.1 has no claims against the Plaintiffs with respect to the following premises and the business

conducted therefrom, and accepts that he has no right, title or interest in the same:

- 1) The premises bearing No.22, on the ground floor of 16/22 Bake House, Fort, Mumbai – 4000023 in which there is currently a proposed restaurant by the name “Town Culture”
- 2) The premises bearing No.24, on the ground floor of 16/22 Bake House, Fort, Mumbai – 400 023 in which there is currently a bakery by the name “Pandora’s Box Bakery”.
- 3) The premises bearing No.12, on the ground floor of “New Bake House”. Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Carter’s Blue”.
- 4) The office at the front part of the third floor of 12 and 16 Old & New Bake House, Fort, Mumbai – 400023.”

23 It is hereby agreed, declared and confirmed that the Plaintiffs have no claims against Defendant No.1 with respect to the following premises and the business conducted therefrom, and respect accept that they have no right, title or interest in the same:

- (a) The said Shop No.14, Ground Floor, New Bake House, Maharashtra Chamber of Commerce Lane, Fort, Mumbai – 400023.

- (b) The premises bearing No. 16, on the ground floor of Old Bake House, Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Colonial Palate.”
- (c) The premises bearing No.16, on the mezzanine floor of Old Bake House, Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Colonial Palate”
- (d) The Office at the back part of the third floor of Old & New Bake House, Fort, Mumbai – 400023”

Criminal Complaints :

“24 It is hereby agreed, declared and confirmed that both parties and their respective family members shall initiate proceedings before appropriate courts/authorities for quashing/withdrawal of the following criminal complaint within 30 days from execution of these Consent Terms after due compliance of the Consent Terms by both parties and their family members shall not make any complaints in the future for the same facts.

- (e) Criminal Complaint No.2800144/SW/2019 filed by Defendant No.1 against Plaintiff No.1 before the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai
- (f) First Information Report bearing No.353/2019 filed in the LT Marg Police Station against Plaintiff No.1 upon

the complaint of Defendant No.1.

- (g) First information Report bearing No.30/2020 filed in the Colaba Police Station against Ms. Samran (also known as Alifiya) Shaikh upon the complaint of Mrs. Shehwar Azmi.
- (h) First information Report bearing No.61/2020 filed in the Agripada Police Station against Ms. Samran Shaikh Upon the complaint of Ms. Bushra Mansuri.
- (i) First Information Report bearing No.28/2020 filed in the MRA Marg Police Station against Mohammed Amir Khan upon the complaint of Plaintiff No.2.
- (j) First Information Report bearing No.27/2020 filed in the Colaba Police Station against Rayan Shaikh, Yusuf Shaikh and Mohammed Amir Khan upon the complaint of Plaintiff No.1.

25 The parties and their family members agree and undertake to co-operate in jointly filing appropriate proceedings in the Hon'ble Bombay Court for quashing and disposing of the above criminal proceedings as advised by the Advocates.

26 Defendant No.1 and Plaintiff No.1 agrees and undertakes to withdraw all the police complaints made by them against them and their family members and will not make any complaint in future for the same facts.”

11 In paragraphs 1 to 5, the 2nd Respondent in his affidavit dated 08/12/20220 filed in this Writ Petition in support of the settlement, has stated thus :-

- “1 I state that I know the Petitioner and his family members since a long period of time. I am a MLA and also the President of Maharashtra Samajwadi Part, and I along with the Petitioner were business partners, but due to various inter se disputes, our relations got severed.
- 2 I state that I had lodged a complaint against Petitioner on 13.06.2019 and 29.06.2019 with the L T Marg Police Station. I state that since the said complaints did not evoke any favourable response, I had approached the Court of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, and inter alia prayed for an order under Section 156(3) of Cr.P.C. which came to be granted. I state that C.R. No.353 of 2019 (corresponding M.E.C.R. No.6 of 2019) came to be registered with L T Marg Police Station against the Petitioner for commission of alleged offences punishable under Section 205, 209, 415, 416, 418, 420, 421, 424, 463, 464, 465, 466, 468, 469, 470, 471, 473, 120-A of Indian Penal Code. The said case came to be numbered as Criminal Application No.2800144/SW of 2019 and is at present pending hearing and final disposal.
- 3 I say that after registration of the aforesaid complaint,

our common acquaintance and mutual friends approached me and requested me to put an end the dispute with the Petitioner. I say that after deep introspection over the events and after due deliberations, I have realized that I acted in undue haste and, in a moment of anger, proceeded to lodge complaint against Petitioner.

4 I say that since the registration of the aforesaid C. R. No.353 of 2019 (corresponding M,E,C,R No.6 of 2019) with L T Marg Police Station, I have realized that it is in our mutual welfare and interest that we put an end to this acrimony and settle the dispute amicably. I do not want to proceed with my complaint and do not intend to prosecute the Petitioners. I have no complaint, grievance or ill will against the Petitioner. I state that the Petitioner has not coerced me or unduly influenced me into executing this affidavit in any manner whatsoever, and the same is executed out of my own free will.

5 In view of the same, I have no objection if this Hon'ble Court quashes the said Criminal Application No.2800144/SW of 2019 arising out of C.R. No.353 of 2019 (corresponding M.E.C.R No.6 of 2019) to be registered with L T Marg Police Station on the basis of my complaint as well as all further proceedings arising out of the said C.R. Hence this affidavit is filed."

12 The learned counsel appearing for both the parties submit that

both the parties have voluntarily agreed to settle the dispute, which is basically commercial in nature, and there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that both the parties have amicably resolved/settled the dispute and decided to seek quashing of Criminal Application No.2800144/SW/2019 arising out CR No.353 of 2019 (corresponding M.E.C.R. No.6 of 2019) registered with L T Marg Police Station.

13 The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of 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

1 2012 (10) SCC 303

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.

14 In view of settlement arrived at between the parties and the consent terms referred to above filed in the Commercial Suit as also the affidavit filed by the 2nd Respondent giving no objection for quashment of the Criminal Case No.2800144/SW of 2019 pending in the file of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, arising out of C.R. No.353 of 2019 (Corresponding M.E.C.R. No.6 of 2019) registered with L T Marg Police Station and all other proceedings arising out of the said C. R. for the offences punishable under Sections 463, 464, 466, 468, 469, 470, 471, 473, 205, 209, 415, 416, 418, 420, 421, 424, 120-A and 465 of the Indian Penal Code, no fruitful purpose will be served by continuing the further prosecution in Criminal Case No.2800144/SW of 2019 pending in the file of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, arising out of C.R. No.353 of 2019 (Corresponding M.E.C.R. No.6 of 2019) registered with L T Marg Police Station and all other proceedings arising out of the said C. R.

15 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made in the impugned FIR and prosecute the present Petitioner. Entire dispute arose out of

commercial transactions. The further continuation of proceedings in Criminal Case No.2800144/SW of 2019 pending in the file of learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, arising out of C.R. No.353 of 2019 (Corresponding M.E.C.R. No.6 of 2019) would tantamount to abuse of the process of the Court. Since the 2nd Respondent by way of filing his affidavit has stated that, he is not interested to pursue the allegations made in the impugned FIR and would not participate in the pending proceedings before the concerned Court, the chances of conviction of the Petitioners would be bleak and remote.

16 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the Writ Petition deserves to be allowed and accordingly the same is allowed in terms of prayer clause (b). Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]