

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.251 OF 2019

1. Kanhayalal T. Parmar,]
Occ: Businss Proprietor M/s. K.]
Trambaklal, having address at 3/62,]
Patel Park, Ranjit Sagar Road, Jamnagar]
– 361 005, Gujarat.]

2. Ashok Keshavlal Kesharia,]
R/at, 8, Golden Arrow, 163/F, Hem]
Colony, S.V. Road, Vile Parle (W),]
Mumbai – 400 056.]

3. Harish Keshavlal Kesharia,]
R/at 1st Floor, 50, Bajaj Road, Vile]
Parle (W), Mumbai – 400 056.]

4. Yash Kesharia]
R/at 1st Floor, 50, Bajaj Road, Vile]
Parle (W), Mumbai – 400 056.]

5. Prashant Laxmichand Chheda,]
At Chandrakant & Co., B/105, Shivaji]
Nagar Co-op. Society, Opp. Sion]
Hospital, Bahudaji Rod, Sion, Mumbai.]

6. Jayank Chandrakant Thakkar,]
At Chandrakant & Co., B/105, Shivaji]
Nagar Co-op. Society, Opp. Sion]
Hospital, Bahudaji Rod, Sion, Mumbai.] ... Petitioners

Versus

1. The State of Maharashtra]
Through to be served Public]
Prosecutor, High Court (A.S.),]
Mumbai.]
2. Jagdish Kumar Ramnivas Sarda,]
Occ.: Business, having address at Villa]
35, Pearl Court, Attapur, Hyderguda,]
Rajendranagar Manda, R.R. District,]
State Telangana, Hyderabad.]
3. M/s. Sarda Agro Oil Ltd.,]
a Company under the Companies Act,]
having address at Villa 35, Pearl Court,]
Attapur, Hyderguda, Rajendranagar]
Manda, R.R. District, State Telangana,]
Hyderabad.]
4. Dhaval Harish Kesharia,]
R/at, 1st Floor, 50, Bajaj Road, Vile]
Parle (West), Mumbai – 400 056.]
5. Rajendra Vrajlal Anandkat,]
Occ. Business, having address at, Avni]
Apartment, Saru Section Road,]
Jamnagar – 361 002, Gujarat.]
6. Suvendhu Rath,]
Occ. Business, having address at,]
Anrus Chamber, A/301, Near]
Mahindra Tower, S.S. Amrutwar Lane,]
Worli, Mumbai – 400 013.] ... Respondents

**ALONG WITH
CRIMINAL WRIT PETITION NO.890 OF 2021**

Jagdish Ramnivas Sarda,]
Occ. Business, R/o. Villa No.35, Pearl]
Country, Pillar No.143, Attapur, Hyderabad.] ... Petitioner

Versus

1. The State of Maharashtra]
(Through Navashiva Police Station,]
Navi Mumbai)]

2. K. Trambaklall]
(Through its Power of Attorney holder]
Ashok Kesharia) 8, Golden Arrow,]
163/F, Hem Colony, S.V. Road, Vile]
Parle (W), Mumbai – 400 056.]

Also having address at -]
Shop No.3, Veebee Mall, Khanvel]
Road, Silvasa – 396 230.] ... Respondents

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Mr. Prajot H. Jaggi for the petitioners in Writ Petition No.251 of 2019 and for respondent No.2 in Writ Petition No.890 of 2021.

Mr. Vikram Sutaria for petitioner in Writ Petition No.890 of 2021 and for respondent No.4 in Writ Petition No.251 of 2019.

Ms. S.D. Shinde, A.P.P. for respondent-State.

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CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 01ST MARCH, 2021.

PRONOUNCED ON : 10TH MARCH, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. These are two writ petitions concerning cross cases initiated by the rival parties against each other. In Writ Petition No.251 of 2019, the petitioners and respondent Nos.4 to 6 are original accused in First Information Report (“FIR”) registered at the Navashiva Police Station, District Raigad, by respondent Nos.2 and 3, who are the original complainants.

2. Petitioner No.1 in the said writ petition is the proprietor of a firm – M/s. Trambaklall, which deals in edible oils, while the other accused persons are agents and representatives of the said firm as also its sister concerns. The said firm had business transactions with respondent No.3-company of which respondent No.2 is the director.

3. It appears that during such business transaction, dispute arose between the parties leading to initiation of criminal proceedings against each other. This is evident from the fact that in Writ Petition No.890 of 2021, the said director of the company, which is the original complainant in Writ Petition No.251 of 2019 is the

accused in an FIR registered at the same police station, at the instance of the aforesaid firm, which in this writ petition is the original complainant.

4. In Writ Petition No.890 of 2021, the petitioner has sought quashing of FIR as well as charge-sheet filed against him for offences punishable under Sections 420, 465 and 471 of the Indian Penal Code (“IPC”). Similarly, the petitioners in Writ Petition No.251 of 2019 have sought quashing of FIR for offences registered against the petitioners and other accused persons for offences punishable under Sections 405, 406, 415, 465, 467, 471 and 420 of the IPC. Although the parties have made allegations against each other leading to initiation of two criminal proceedings, it appears that thereafter, the parties settled their disputes mutually and they arrived at an amicable settlement leading to execution of Consent Terms dated 12/01/2020. The said document has been placed on record, wherein it is stated that the disputes between the parties have been settled and they have agreed to withdraw cases initiated against each other, both in Maharashtra as well as Telangana. It is stated in the said consent terms that the parties would co-operate with each other to ensure that such criminal proceedings are quashed.

5. The first informants, who have been arraigned as respondent No.2 in these petitions, both have placed on record affidavits in

reply in the petitions confirming the fact that the *inter se* disputes between the parties have been resolved. In Writ Petition No.251 of 2019, respondent No.2 (original complainant) has stated in his affidavit in reply as follows:

“1. I state that I am a First Informant and the F.I.R. bearing C.R. No.M-3/2019 registered with Nava Seva Police Station, Navi Mumbai, for offences punishable u/ ss. 420, 407, 471 and 34 of the Indian Penal Code, 1860, lodged at my instance.

2. I state that however disputes between the Petitioners and myself have been settled and I have entered into consent terms with Petitioners dated 12.01.2020.

3. I state that without going into merits of the case, I have no objection if the subject FIR and proceedings thereon are quashed and set aside against the Petitioners.

4. I state that I have gone through the copy of the petition and I agree with the fact that the above stated dispute is amicably settled between the Petitioners and myself and I have entered into consent terms with the Petitioners.

5. I state and submit that both parties to consent terms have to adhere to terms of settlement dated 12/01/2020 and I state that in case I fail to adhere to do my part of obligation, I shall be held liable for contempt of Court under the relevant provisions of the Contempt of Court.

6. I state that my 500 MT goods i.e. edible oil is seized at the instance of complaint/FIR lodged by the Mr. Ashok Kesharia, a power of attorney holder of M/s. K. Trambaklall in connection with RCC No.49/2017 and my present consent is given subject to the Petitioners herein gives NOC/letter/email for removal of seizure in

connection with FIR bearing MECR No.2/2014 registered with Nahva Seva Police Station.

7. I have no objection if the proceedings arising out of FIR bearing C.R. No.M-3/2019 registered with Nava Seva Police Station, Navi Mumbai investigated by Vashi Police Station, Navi Mumbai, is quashed and set aside.”

6. Similarly, respondent No.2 (original complainant) in Writ Petition No.890 of 2021 has placed on record an affidavit, wherein it is stated as follows:

“1. I state that I am a First Informant and the F.I.R. bearing C.R. No.M-2/2014 registered with Nhava Sheva Police Station, Navi Mumbai, for offences punishable u/ss. 420, 465, 471 and 34 of the Indian Penal Code, 1860, lodged at my instance and now the same is pending RCC No.49/2017, pending before the Ld. JMFC Court at Uran, Navi Mumbai.

2. I state that however disputes between the Petitioner and myself have been settled and I have entered into consent terms with Petitioner on 18/02/2021.

3. I state that without going into merits of the case, I have no objection if the subject FIR and proceedings thereon are quashed and set aside against the Petitioner, subject to de-freezing of Bank Accounts more particularly mentioned and recorded in the consent terms dated 18/02/2021.

4. I state that I have gone through the copy of the petition and I agree with the fact that the above stated dispute is amicably settled between the Petitioners and

myself and I have entered into consent terms with the Petitioners.

5. *I state and submit that both parties to consent terms has to adhere to terms of settlement dated 18/02/2021 and I state that in case me or my firm/representatives of my firm fails to adhere to do my part of obligation, I shall be held liable for contempt of Court under the relevant provisions of the Contempt of Court.*

6. *I have no objection if the proceedings in RCC NO. 49 of 2017 arising out of FIR bearing C.R. No.M-2/2014 registered with Nava Seva Police Station, Navi Mumbai, is quashed and set aside and the 500 MT of goods seized vide notice dated 27/04/2017 are released in favour of the Petitioner.”*

7. From the contents of the aforesaid affidavits, it is evident that the parties do not wish to further pursue the criminal proceedings against each other. The deponents of these affidavits were personally present before us in the court. We interacted with them and they confirmed that the disputes have been settled and the affidavits have been sworn by them without any coercion and by their own free will.

8. The Supreme Court in the case of **Gian Singh v. State of Punjab & Anr.**¹ has held that the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the

¹ (2012) 10 SCC 303

offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences 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 has also held that 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.

9. Since the material on record clearly demonstrates that the disputes between the parties were essentially of a commercial nature and certain misunderstandings have led to initiation of criminal proceedings, the ratio of the aforesaid judgment of the Hon'ble Supreme Court applies to the facts and circumstances of the present cases. Therefore, the petitions deserve to be allowed.

10. But, at the same time, the parties ought to deposit certain amounts towards costs for disposal of the present writ petitions on

the basis of the settlement and consent given by the original informants. The said amounts towards costs shall be utilized for a noble cause.

11. In view of the above, the petitioners in both the petitions shall deposit an amount of Rs.1,00,000/- each in the account of the Children's Aid Society, Mumbai, within a period of four weeks from today, the account details of which are as follows:

Name : The Children's Aid Society, Mumbai.
SB.A/c. No. : 02370100005612
Bank : UCO Bank
IFSC Code : UCBA0000237

12. On the costs being deposited by the petitioners in Criminal Writ Petition No.251 of 2019 and the petitioner in Criminal Writ Petition No.890 of 2021 in the aforesaid bank account, the Children's Aid Society, Mumbai, shall immediately transfer the said amount of costs to the New and Additional Children's Home, Mankhurd, Mumbai.

13. Accordingly Writ Petition No.251 of 2019 is allowed in terms of prayer clause (b), which reads as under:

“(b) that after examining the legality and validity of FIR No. M3 of 2019, this Hon'ble Court be pleased to quash and set aside the FIR No.M3 of 2019 registered with the Nhava Sheva Police Station under section 405, 406, 415, 465, 467, 471 and 420 on such terms and

conditions as this Hon'ble Court may deem fit and proper”

14. In view of the above, Writ Petition No.890 of 2021 is allowed in terms of prayer clause (a), which reads as under:

“(a) This Hon'ble Court be pleased to quash and set aside proceedings in connection with RCC No.49 of 2017 arising out of FIR bearing MECR No. 2/2014 registered with Nahva Seva Police Station, Navi Mumbai, pending before the Ld. Court of Civil Judge Junior Division Uran, for the offences punishable u/s. 420, 465, 471 r/w. 34 of the Indian Penal Code, 1860 and goods i.e. 500 MT tons of edible oils seized vide letter dated 27/04/2017 may kindly be released/defreezed.”

15. It is further made clear that the cost is condition precedent for quashing of the FIRs and it is only upon satisfaction of the aforesaid condition that the FIRs shall stand quashed.

16. Rule made absolute in the above terms. The writ petitions are disposed of accordingly.

17. List the matters on 20/04/2021 for compliance.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)