IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 643 OF 2020

Tayyabali Yusufali Shaikh
Age : 42 years, Address Room
No.786/2/2/, Near Yasmin Studio,
Bandra Plot, Jogeshwari (East),
Mumbai 400 060. ...Petitioner

Versus

1. The State of Maharashtra
Through the Public Prosecutor's Office,
Hon'ble Bombay High Court, Mumbai
2. Mrs. Shahnaz Hussain Sayyed,
Age : 48 years, Occupation : Service
Address : Room No.05, Macchiwala
Chawl, Pascal Colony, Jogeshwari
(West), Mumbai – 400 060 ...Respondents

Ms. Smita Sonawane a/w Ms. Reena Barot, for the Petitioner.
Mr. Sameer Sharif, a/w Mr. Suhail Shariff, for respondent no.2.
Mrs. S. D. Shinde, APP for the State/Respondent no.1.
Respondent no.2 present.

CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.
DATED: 18th AUGUST, 2021.

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ("the Code") is preferred to quash and set aside CC No.3165/PW/

2016, pending on the file of the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, arising out of FIR No.194 of 2016, dated 2nd June, 2016, registered at Meghwadi Police Station, Mumbai, for the offences punishable under Sections 354, 323 and 504 of the Indian Penal Code, 1860 ("the Penal Code"), at the instance of respondent no.2 – first informant, on the basis of the settlement of the dispute

3. The petition arises in the backdrop of the following facts:

(a) The petitioner and respondent no.2 are the residents of slum situated at CTS No.147, Jogeshwari (East), Mumbai. On 1st June, 2016 a survey was being carried out under Slum Rehabilitation Scheme. Some residents resisted survey. An altercation ensued between the groups of persons who pressed for and resisted the survey. The petitioner allegedly abused respondent no.2, kicked her in the stomach and inappropriately touched her chest. Respondent no.2 thus approached Meghwadi Police Station and lodged a report leading to CR No.194 of 2016 for the offences punishable under Sections 354, 323 and 504 of the Penal Code.

4. The petitioner has approached the Court with a case that, in the intervening period, the dispute between the petitioner and

respondent no.2 has been amicably resolved. The latter has no objection to quash the prosecution.

5. Ms. Smita Sonawane, the learned Counsel for the petitioner and Mr. Sameer Sharif, the learned Counsel for respondent no.2 make a joint statement that the dispute between the petitioner and respondent no.2 has been amicably resolved and respondent no.2 has sworn an affidavit incorporating her consent for quashing the prosecution.

6. Mrs. Shahnaz Hussain Sayyed – respondent no.2, the first informant appeared before the Court. She categorically submitted that she has decided to resolve the dispute with the petitioner out of her own volition. There is no coercion or duress. She has filed the affidavit voluntarily. Respondent no.2 further stated that she had made the allegation of outraging of modesty against the petitioner due to misunderstanding. Now the dispute between the petitioner and respondent no.2 has been settled and, thus, she has no objection to quash the prosecution. Respondent no.2 is identified by Mr. Sameer Sharif, advocate for respondent no.2.

7. Paragraphs 2 to 6 of the Affidavit read as under:

> "**2**. I state that the petitioner is my neighbour and known to me from last many years. I say that the said F.I.R. was lodged in the spur of the moment and out of sheer misunderstanding. I say that thereafter, a compromise has

been duly affected between me and the petitioner and we have settled the differences and disputes amicably and for that purpose I am willing to abandon my allegations.

3. I say that I don't want to prosecute or depose against the Petitioner in any Court of law as matter has been amicably settled between us.

4. I say that I do not want to further pursue with the above-mentioned F.I.R. Vide C.R.No.194 of 2016 and charge sheet bearing C.C.No.3165 of 2016. I have no objection, if the above said FIR and charge sheet is cancelled/quashed/withdrawn.

5. I state that by masking this affidavit, I make it clear that, I have no dispute or ill-feeling with/against above-named petitioner and whatever differences/issues expressed in F.I.R. and charge sheet are no more in existence and the issue in the said complaint is clarified, settled and resolved cordially between us.

6. I say that I undertake to make the necessary statement for cancellatiion/quashing/withdrawal of the said F.I.R. and charge-sheet, before the Hon'ble Court as and when required to do so."

8. In the backdrop of the aforesaid submissions, statements and affirmations in the affidavit, we have perused the material on record. Evidently, the genesis of the dispute is in the process initiated for development of slum under the Slum Rehabilitation Scheme. The alleged altercation occurred at a public place, where the members of the rival group came face to face. In the circumstances, the necessary intent or knowledge to outrage the modesty does not seem to have been, *prima facie,* made out. Moreover, respondent no.2 has categorically affirmed that the allegations were made out of sheer misunderstanding.

9. In the backdrop of the fact that the parties have settled the dispute, continuation of the prosecution would be a futile

exercise. It is very unlikely that respondent no.2 would support the prosecution and it will end in conviction. On the contrary, the continuation of the prosecution, where the parties have amicably resolved the dispute, may cause grave prejudice to the parties. It would also amount to abuse of the process of the Court.

10. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Gian Singh vs. State of Punjab and another***[1]**,** wherein the Supreme Court has observed as under;

> "**61.** .....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 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."

11. Reverting to the facts of the case, it becomes abundantly clear that the dispute arose over the development of a slum

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1 2012 (10) SCC 303.

rehabilitation scheme. The parties who held different views on the said matter allegedly clashed. Eventually, the parties have resolved the dispute. Continuation of the prosecution, in such circumstances, would serve no purpose except putting unnecessary burden on the criminal justice system. Therefore, in order to secure the ends of justice and prevent the abuse of the process of the Court, we are inclined to allow the petition.

12. Hence the following order:

: **ORDER** :

(i) The petition stands allowed.

(ii) The proceeding in CC No.3165/PW/2016, pending on the file of the learned Metropolitan Magistrate, Railway Mobile Court at Andheri, Mumbai, arising out of FIR No.194/2016 dated 2nd June, 2016, lodged with Meghwadi Police Station, stands quashed and set aside.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.] **[S. S. SHINDE, J.]**