

Mandira
Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1252 OF 2020

Chandraprakash B. Lodha	]	
R/o Plot No.12, J/8,	]	
Near Durgamata Mandir,	]	
Road No.8, Baiganwadi,	]	
Govandi, Mumbai – 400 043	]	
	]	.. Petitioner

VERSUS

1. Smt.Rukmini Baban Kadam	]	
R/o. Sector 11, Plot No.747,	]	
Bhaskar Hira Patil Building,	]	
1 st Floor, Flat No.103, Juhu Gaon,	]	
Vashi, Navi Mumbai	]	
	]	
2. State of Maharashtra	]	
through the Public Prosecutor	]	
Bombay High Court, Mumbai	]	.. Respondents

Mr.Raghavendra Mehrotra for the Petitioner.

Mr.R.V.Bansode for Respondent No.1.

Mr.J.PYagnik, A.P.P for the Respondent/State.

Smt.Rukmini Baban Kadam-Respondent No.1 present in Court.

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

RESERVED ON : 15th FEBRUARY, 2021
PRONOUNCED ON : 22nd FEBRUARY, 2021

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. By this writ petition, the petitioner seeks to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as also power under Section 482 of the Code of Criminal Procedure for quashing of Criminal Case No.777/PW/2017 pending on the file of the 57th Metropolitan Magistrate Court at Kurla arising out of the FIR No.595 of 2015 registered at Shivaji Nagar Police Station for the offences punishable under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code.

3. In the complaint leading to registration of FIR, respondent No.1 (original complainant) submitted that the petitioner had cheated her, taking advantage of her old age and illiteracy. It was submitted that the petitioner first became a partner in connection with fair price shop and thereafter caused an application to be moved before the competent authority for transfer of licence in his name. On this basis, it was submitted that the petitioner had committed the said offences. Upon registration of FIR, investigation was undertaken.

4. Respondent No.1 also claimed that she approached the competent authority raising her grievance against the petitioner and that there was litigation between the parties. But, after common friends intervened, parties entered into a settlement and consent terms were also executed between them.

5. In pursuance thereof, respondent No.1 appeared before this Court through advocate and reiterated the fact that dispute between the parties had been settled and that she had made allegations against the petitioner due to misunderstanding. In this backdrop, we interacted with respondent No.1 when she was personally present before this Court. She specifically stated that she had sworn the affidavit filed before this Court, as also the consent terms by her own free will and without coercion from any quarter. It was reiterated that the dispute had arisen in the first place due to misunderstanding between the parties and this was specifically stated in the consent terms. She further stated that the obligations in the consent terms had been satisfied by the petitioner and that therefore, she was supporting the prayer of quashing of FIR and criminal proceedings.

6. We have perused the contents of the complaint leading to registration of FIR and when read with the contents of the consent terms and the affidavit filed by respondent No.1 before this Court, it appears that the dispute arose between the parties essentially due to misunderstanding and that the dispute is of a private and civil nature. The relevant contents of the affidavit filed before this Court, read as follows :

“2. I say that in the above case, after prolonged Litigation a settlement has taken place due to the mediation of certain common friends between and the petitioner.

3. I say that in view of the settlement, I do not intend to proceed with the case No.777/PW/2017 pending on the file of the Ld.57th Metropolitan Magistrate Court at Kurla arising out of the FIR bearing No.595/2015 cases which is initiated by me as against the Petitioner. I say that only in order to have

peace and live in harmony and to avoid wasting long time, I am intending to consent for withdrawal of the case mentioned.

4. I say that all my demands are already decided in the mutual consent term filed and the Petitioner is ready to compensate me. I say that the aforesaid case is not of such nature as the same could not be quashed by this Hon'ble Court in its inherent power or writ jurisdiction.

5. In view of the settlement, I hereby pray for the closure of the above case which is pending Case No.777/PW/2017 pending on the file of the Ld. 57th Metropolitan Magistrate Court at Kurla arising out of the F.I.R. bearing No.595/2015 where I am the 1st Informant/Complainant.

6. I am making this affidavit on my own wish and without any force, Coercion or compulsion from any one."

7. The Hon'ble Supreme Court in the case of **Gian Singh 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 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

¹ 2012 (10) SCC 303

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.

8. In view of the aforesaid position of law and its applicability to the facts of the present case, we are of the opinion that the present writ petition deserves to be allowed. In view of the stand specifically taken by respondent No.1 before this Court, there is hardly any possibility of the proceedings initiated through the said FIR, culminating in proving the guilt of the petitioner. Hence, further continuation of such proceedings would be of no consequence.

9. In view of the above, the writ petition is allowed in terms of prayer clause (a), which reads as follows :-

“a. This Hon’ble Court be pleased to issue writ of certiorari or writ in the nature of mandamus or any other writ, Order or direction calling for the records and proceedings of the **Case No.777/PW/2017 pending on the file of the Ld.57th Metropolitan Magistrate Court at Kurla arising out of the F.I.R. bearing No.595/2015** and upon examining the legality, correctness, propriety of the proceedings conducted so far, be pleased to quash and set aside the same.”

10. Rule is made absolute in above terms.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)