

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.271 OF 2021

- | | | |
|----|-----------------------------------|----------------------|
| 1] | Manoj Kumar Chhikara |] |
| | Age 45 years, Occu : Scientist |] |
| | R/at : Flat No.513, TNR, |] |
| | Northcity Residences, Jeedimetla, |] |
| | Hyderabad, Telangana – 500067 |]..... Accused No.1 |
| | |] |
| 2] | Rakesh Rana |] |
| | Age 42 years, Occu : Scientist |] |
| | R/at : F-54, Lagpat Nagar, |]..... Accused No.2. |
| | Part 1, New Delhi – 110024 |]..... Applicants. |

Versus

- | | | |
|----|---------------------------------------|-----------------------------|
| 1] | State of Maharashtra |] |
| | (Through Ld. P P) |]..... Respondent No.1 |
| | |] |
| 2] | Mr. Ramesh Shankarrao Patil |] |
| | For Serum Institute of India Pvt. Ltd |] |
| | Adn Serum Institute of India Research |] |
| | Foundation |]..... Original Complainant |

Mr. Abhijeet Sarwate for the Applicants.
Smt. A S Pai, PP for Respondent No.1/State.
Mr. Santosh Pohare for Respondent No.2.
Applicant No.1 present through Video Conferencing.
Respondent No.2 present through Video Conferencing.

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

DATE : 03rd September 2021

ORAL JUDGMENT (S. S. SHINDE, J)

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

2 This Criminal Application has been filed by the Applicants for the following substantial reliefs :-

“(b) That the criminal case pending before the Ld. J.M.F.C. Judge, Cantonment Court, Pune, bearing No. R.C.C. No.424/2018 clubbed with F.I.R. No.263/2016 registered with the Hadapsar Police Station, Pune be quashed.

(c) Further directions be given to the Nazir of the JMFC (Cant) Pune to refund the amount of Rs.50000 each deposited by the Petitioners towards security deposit for travelling abroad vide receipt No.7, 8 dated 03/04/2019.

3 The Applicant Nos.1 and 2 are the original accused and the Respondent No.2 is the original complainant in the proceedings pending before the JMFC, Cantonment Court, Pune. It is the case of the Applicants that, Applicant No.1, on 12/07/2004, had joined the employment of Serum Institute of India Research Foundation which is the sister concern of Serum Institute of India Pvt. Ltd, and both are the parts of Cyrus Poonawalla Group. He tendered his resignation on 31/05/2013 and, he was relieved from the employment on 17/06/2013. At the time of his resignation, the Applicant No.1 was working as a Head, Immunobiology and Molecular Research Lab. The Applicant No.2 had also joined the employment of Serum Institute of India Pvt. Ltd which is the sister concern of Serum Institute of India Research Foundation and both are the parts of Cyrus Poonawalla Group. The Applicant No.2 had tendered his resignation and was relieved from the employment on 14/08/2011. At the time of his resignation, the Applicant No.2 was working as an Executive

Officer, Quality Control. Thereafter both the Applicants have started working with MSD Wellcome Trust Hilleman Laboratories Pvt. Ltd, New Delhi. The Applicant No.1 has worked with the said Company for the period from 18/06/2013 to 15/10/2020 as a Senior Director, R&D, and the Applicant No.2, who joined the said company on 01/09/2011, is presently working as a Senior Scientist, R&D of the said company. It is the case of the Applicants that they were named as co-inventors in certain Patent Applications filed by the said Company i.e. MSD Wellcome Trust Hilleman Laboratories Pvt. Ltd. and the patents were published. Thereafter the Serum Institute of India Research Foundation and Serum Institute of India Pvt. Ltd., through their representative, have jointly filed the impugned FIR bearing CR No.263/2016 dated 07/05/2016 with the Hadapsar Police Station, Pune for the offences punishable under Sections 420, 406, 409 and 418 of the Indian Penal Code, and under Sections 43 and 66 of the Information and Technology Act against the Applicants.

4 The learned counsel appearing for the Applicants and the Respondent No.2 have jointly submitted that after completion of investigation in the impugned FIR, the charge-sheet has been filed in the Court of learned JMFC, Cantonment, Pune on 09/05/2018 bearing RCC No.424/2018. The learned counsel appearing for both the parties submitted that during the pendency of the said proceedings, the parties have arrived at a settlement, and

accordingly Settlement Agreement dated 20th January 2021 came to be executed between the parties. It is submitted that by virtue of the said Settlement Agreement, the Respondent No.2 agreed to withdraw the impugned FIR and the Charge-sheet. It is submitted by the learned counsel for the Applicants that the Applicants have deposited Rs.50000 each before the learned JMFC, Cantonment Court, Pune when they sought permission to travel abroad to attend seminar.

5 With the able assistance of the learned counsel appearing for the parties, we have perused the recitals of the said Settlement Agreement. The said Settlement Agreement has been signed by Mr. Ramesh Patil for and on behalf of Serum Institute of India Private Limited and Serum Institute of India Research Foundation – the Respondent No.2 herein, Mr. Sourabh Sobti for and on behalf of MSD Wellcome Trust Hilleman Laboratories Private Limited, Dr. Manoj Kumar Chikkara – the Applicant No.1, and Mr. Rakesh Rana – the Applicant No.2 herein. Clauses 1.1, 1.10 and 1.12 are material and the same are reproduced herein under for ready reference :-

“NOW THEREFORE, the Parties hereby settled the aforementioned matters in the manner and on the terms and conditions as enumerated below.

1.1 On execution of this Settlement agreement and in pursuance to these consent terms, Party A and Party B for effecting the withdrawal of the FIR, shall execute notarized Affidavits through Mr. Rammesh Shankerro

Patil/Authorized Representative stating that they have no objection whatsoever for quashing the FIR No.263/2016 and criminal case RCC N.424/2018 and thereby giving full consent to such quashing of the proceedings.

1.10 Party C :

(i) hereby represents, warrants and confirms that, as on the date of this Settlement Agreement it has not engaged or entered directly or indirectly in any out-licensing of the aforementioned patent(s) to any third-party; and

(ii) further agrees and confirms that it shall not, before withdrawing/surrendering/abandoning the rights, title and interest in the Men A-TT Conjugate by amending the aforesaid Patent Application, engage directly or indirectly in any out-licensing of aforementioned patent(s) to any third party and not to encourage, induce or otherwise facilitate any third party to take any action that would be breach of this Settlement Agreement.

1.12 Party D and Party E have individually executed an Affidavit (Annexure – B & C) confirming that each of them shall not directly or indirectly file a patent application on reductive amination based “Men A-TT Conjugates” related to the patent family of the Application Nos. 3047/DEL/2013, 2363/EEL/2014, PCT/IB2014/065201 and shall not directly or indirectly disclose the said Confidential Information, acquired during their tenure with Party A or B or received during the course of aforementioned litigation to any third parties, including but not limited to, any individuals, institutions, companies, past/present & future employers, commercial endeavors, clients (prospective or otherwise), vendors (prospective or otherwise) and or any other entities.”

6 By virtue of the said Settlement Agreement, Mr.Rammesh Shankarrao Patil – the authorized representative of Respondent No.2

Companies, who is the original complainant, has filed his Affidavit. It is stated in Paragraphs 3 to 8 of the said Affidavit thus :-

- “3 *On the instructions of Serum Institute of India Private Limited & Serum Institute of India Research Foundation I had filed a F.I.R. with Hadapsar Police Station, Pune bearing C.R. No.263/2016 against Dr. Manoj Kumar Chikkara and Mr. Rakesh Rana respectively. The police investigated the offences. On completion of the investigation, charge-sheet has been filed by the Police under the case No. RCC No.424/2018.*
- 4 *The said Criminal complaint is pending before the Ld. J.M.F.C. Cantonment Court, Pune bearing R.C.C. No.424/2018. During the proceedings and on discussions among Serum Institute of India Private Limited & Serum Institute of India Research Foundation & MSD Welcome Trust Hilleman Laboratories Private Limited and Accused/Petitioner Nos.01 and 02 as mentioned above, it is mutually agreed that certain terms and conditions which are amenable and agreeable to the above mentioned parties and agreed out of court, the criminal proceeding bearing R.C.C. No.424/2018 pending before the Ld. J.M.F.C. Cantonment Court, Pune, shall be withdrawn.*
- 5 *The dispute which was in regard to RCC No.424/2018 has been resolved in toto.*
- 6 *The Petitioners mentioned hereinabove, have filed the present Petition for quashing of the criminal complaint bearing R.C.C. NO.424/2018.*
- 7 *That for the purpose of getting the proceedings quashed, as is required under the criminal law, I being the Original Complainant, my consent is required. I hereby give my consent for giving “No Objection” for quashing of the Criminal Complaint RCC N.424/2018.*
- 8 *I hereby, vide this Affidavit and on instructions of Serum Institute of India Private Limited & Serum Institute of India Research Foundation, being the Original Complainant, do hereby give my consent for allowing*

the Criminal Complaint bearing R.C.C. No.424/2018 before the Ld. J.M.F.C. Cantonment Court, Pune to be quashed.”

7 Mr. Ramesh S Patil – the representative of the 2nd Respondent is present before this Court through video conferencing. He is identified by the learned counsel appearing for the 2nd Respondent. He stated that he has filed the impugned FIR on the instructions of Serum Institute of India Private Limited & Serum Institute of India Research Foundation. He further stated that the dispute between the parties has been resolved and settled. He also admitted the execution of the Settlement Agreement between the parties. He stated that on the instructions of aforesaid two companies, he is giving consent/no objection for quashing the impugned FIR and the Charge-sheet. He further stated that it was his voluntary act to sign the settlement agreement and there was no coercion or undue influence or force upon him to sign and execute the said settlement agreement.

8 The learned counsel appearing for both the parties submit that for business purpose, both the parties have decided to resolve the dispute, and, they have voluntarily agreed to settle the dispute 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 impugned FIR/Charge sheet by filing this Criminal Application.

9 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 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.

10 In view of settlement arrived between the parties, no fruitful purpose will be served in continuing the further proceedings in RCC No.424/2018 pending before the learned JMFC, Cantonment Court, Pune

¹ 2012 (10) SCC 303

arising out of the impugned FIR bearing CR No.263/2016 registered with Hadapsar Police Station for the offences punishable under Sections 420, 406, 409 and 418 of the Indian Penal Code, and under Sections 43 and 66 of the Information and Technology Act against the Applicants.

11 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Applicants in the impugned FIR, and continuation of further proceedings in RCC No.424/2018 arising out of FIR No.263/2016 would tantamount to the abuse of the process of the Law/Court. Since the first informant i.e. the 2nd Respondent is not going to support the allegations made in the FIR, the chances of the conviction of the accused would be remote and bleak.

12 During the course of arguments, on a specific query being put to the learned counsel appearing for the parties, whether the Applicants and Respondent No.2 are willing and ready to deposit some amount towards noble cause of the Children's Aid Society, Mumbai, both of them answered in the affirmative and, on instructions, submitted that the Applicants and the 2nd Respondent are ready to deposit the amount of Rs.50,000/- each. Statement is accepted.

13 For the reasons stated herein above, the Criminal Application is allowed in terms of prayer clause (b), subject to both the Applicants depositing a sum of Rs.50,000/- (Rupees Fifty Thousand only) i.e. Rs.25,000/- by each of the Applicants, and, the Respondent No.2 depositing a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards the noble cause of the Children's Aid Society, Mumbai, who shall immediately transfer the amounts to New & Additional Children's Home, Mankhurd, Mumbai, which reads thus :-

“(b) That the criminal case pending before the Ld. J.M.F.C. Judge, Cantonment Court, Pune, bearing No. R.C.C. No.424/2018 clubbed with F.I.R. No.263/2016 registered with the Hadapsar Police Station, Pune be quashed.

14 In so far as prayer (c) for refund of Rs.50,000/- each deposited by the Applicants before the JMFC, Cantonment Court, Pune is concerned, liberty is granted to the Applicants to apply before the said Court.

15 Within a period of two weeks from today, the Applicants to deposit a sum of Rs.50,000/- and the Respondent No.2 to deposit a sum of Rs.50,000/- in the following Bank Account of Children's Aid Society, Mumbai, who shall immediately transfer the said amounts for betterment of the children to the New and Additional Children's Home, Mankhurd, Mumbai.

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

16 Payment of aforesaid costs is a condition precedent for allowing this Criminal Application and this order will take effect after depositing the amount of costs by both parties.

17 Rule is made absolute to the above extent and the Criminal Application stands disposed of accordingly. List the Application on 22/09/2021 under caption "For Compliance" of deposit of costs.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]