

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1449 OF 2021

1. Bhagwan Ramnath Dhatrak
Indian Citizen and Inhabitant, aged
about 39 years, Occupation –
Agricultural,
2. Shashikant Ramnath Dhatrak,
Indian Citizen and Inhabitant, aged
about 52 years, Occupation –
Agricultural,
3. Ashok Ramnath Dhatrak,
Indian Citizen and Inhabitant, aged
about 45 years, Occupation –
Agricultural,
4. Suman Ramnath Dhatrak,
Indian Citizen and Inhabitant, aged
about 70 years, Occupation –
Agricultural,
5. Mrs. Kavita Bhagwan Dhatrak
Indian Citizen and Inhabitant, aged
about 35 years, Occupation –
Agricultural, All residing at Umrare,
Taluka Dindori, District Nashik,
Maharashtra.

...Petitioners

Versus

1. The State of Maharashtra
(Through The Ozhar Police Station)
2. Vinod Pundalik Shinde,
Indian Citizen and Inhabitant, residing
at Kanchan Apurva Building, Santoshi
Mata Nagar, Chinchkhed Road,
Pimpalgaon, Baswant, Taluka, Niphad,
District Nashik, Maharashtra

...Respondents

Mr. Shailendra Pendse, for the Petitioners.

Smt. A. S. Pai, PP for the State/Respondent no.1.

Mr. B. K. Barve, a/w Archana Lad, Sheetal Tanpure, Santosh
Wagh, i/b B. K. Barve, & Co., for Respondent no.2.

Mr. Vinod Shinde, Respondent no.2 present through V.C. &
interacted.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ**
DATED: 29th JULY, 2021
(Through V.C.)

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

1. Leave to amend. Necessary amendment be carried out forthwith.
2. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.
3. This petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (“the Code”) is filed to quash and set aside the first information report (“FIR”) bearing CR No.76 of 2020 dated 9th August, 2020, registered at the instance of respondent no.2 – Vinod Shinde, the first informant, for the offences punishable under Sections 143, 147, 341, 323, 504 and 506 of the Indian Penal Code, 1860 (“IPC”) and Section 3(2)(5a), 3(1) (r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“the SC and ST Act”).
4. Mr. Pendse, the learned Counsel for the petitioner and Mr. Barve, the learned Counsel for respondent no.2 – the first informant, make a joint statement that during the pendency of this petition, the petitioner and respondent no.2 have amicably

resolved the dispute. Respondent no.2 has sworn an affidavit giving no objection to quash and set aside the Special Case No.74 of 2020, arising out of FIR No.76 of 2020.

5. Respondent no.2 Vinod Shinde appeared before the Court through video conferencing. He is identified by Mr. B. K. Barve, the learned Counsel for respondent no.2. We have interacted with respondent no.2. He submitted that he has decided to settle the dispute with the petitioner on his own volition. There is no coercion or duress. He has filed the affidavit voluntarily. A copy of the Memorandum of Understanding arrived at between the parties is annexed to the said affidavit. The paragraphs 4 to 8 of the said affidavit read as under:

“4. I respectfully submit that myself and the petitioner are the merchants in Pimpalgaon onion and tomatoes market and residing at the vicinity at Pimpalgaon, Nashik, and therefore to ease the tension and to maintain the cordial relations, I have executed and signed the aforesaid settlement dated 8th April, 2021 before Ashok B. Katkade, Notary at Nashik and have agreed to settle the dispute with petitioners amicably and to maintain cordial relations with each others and accordingly compromise was recorded by way of settlement dated 8th April, 2021.

5. I further say that pursuant to said settlement, I have agreed to accord my consent to quash and set aside and/or to compound the offences registered U/s.143, 147, 341, 323, 504, 506 of the Indian Penal Code r/w Section 3(1)(r)(s), 3(2)(v-a) of Scheduled Castes and Scheduled Tribes (Prevention) of Atrocities Act, 1999 duly registered by Ozar Police Station, Dist. Nashik, vide C.R. No.76 of 2020 at my instance.

6. I have agreed and execute this consent, stating that I have decided not to proceed with my complaint vide C.R. No.76 of 2020 and agreed to withdraw all allegations, cases and/or litigations inclusive of complaints U/s. 138 of N.I. Act

arising out the subject matter of settlement and do not have any objections, if the above Writ Petition No.1449 of 2021 is allowed in terms of prayer Clause (A) of the above petition.

7. I further say that the petitioners abovenamed pursuant to settlement to pay lumpsum settlement amount of Rs.25,00,000/-, the petitioner abovenamed have made part payment of Rs.16,00,000/- i.e. (1) vide Demand Draft No.489965 dated 23/02/2021 for Rs.10,00,000/- and (2) Demand Draft No.489781 dated 28/06/2021 for Rs.6,00,000/- both drawn on Union Bank of India, Dindori, Dist-Nashik by leaving balance amount of Rs.9,00,000/-, which will be paid by the petitioners to me being original complainant in two installments i.e. Rs.4,50,000/- shall be paid at the time of passing an order for quashing by this Hon'ble Court and remaining balance amount of Rs.4,50,000/- shall be paid upon withdrawal of criminal complaints inclusive of the complaint u/s 138 of N.I. Act, for which the petitioners have agreed to handover two cheques each for Rs.4,50,000/- to me to fulfill their obligations under the Settlement.

8. I am filing this Consent Affidavit being the respondent no.2 in the above petition as well as First Informant in the F.I.R. No.76 of 2020 to allow the above Criminal Writ Petition No. 1449 of 2021 with the permission to compound the said offences registered under the said F.I.R. and to avoid the further futile prosecution, since the dispute have been amicably settled and no purpose will be served by proceeding with the said C.R.No.76 of 2020, which was registered for non payment of Commercial transaction by the petitioners abovenamed. The petitioners abovenamed and myself being the merchants and the brokers in the onion and tomatoes market at Pimpalgaon, Dist.-Nashik and only to ease the relations and to continue the business relations, we have amicably settled the dispute in respect of my payments and which has been finally settled for lumpsum settlement of Rs.25,00,000/- out of which the part payment of Rs.16,00,000/- as stated hereinabove is received by me in furtherance to the settlement dated 08/04/2021 and agreed to cancel the earlier cheques issued in the subject transaction by issuing fresh two cheques for an aggregate sum of Rs.9,00,000/- being the balance amount of settlement towards my commercial transaction for my sale of onion and tomatoes at Pimpalgaon market at Nashik."

6. In the backdrop of the aforesaid submissions and statements, we have perused the material on record. It seems that the commercial dispute, arising out of the sale and delivery

of tomatoes, was the genesis of the occurrence, which took place on 22nd June, 2020. Though, there are some assertions in the FIR reflecting upon the caste of respondent no.2, in the light of the settlement arrived at between the parties and the statement made in the affidavit of respondent no.2, we are of the view that, a *prima facie* case for the offences punishable under SC and ST Act is not made out. It seems that the entire commercial dispute between the parties has been resolved as is evidenced by the Memorandum of Understanding annexed to the affidavit of respondent no.2 and the statement made by respondent no.2 before this Court today that he has received agreed amount under the terms of settlement.

7. In the aforesaid view of the matter, the likelihood of the prosecution resulting in a conviction is very remote and bleak. Thus, no fruitful purpose would be served by continuing the prosecution. On the contrary, the continuation of the prosecution may cause serious prejudice to the petitioners and respondent no.2, as well.

8. A useful 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

12012 (10) SCC 303

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.”

9. The aforesaid pronouncement applies with equal force to the facts of the instant case. The dispute arose out of a commercial transaction. It was in the nature of a private dispute with predominantly civil flavour. Thus, in order to secure the ends of justice and prevent the abuse the process of the Court, we are persuaded to allow the petition.

10. Hence the following order:

: ORDER :

The petition stands allowed in terms of prayer Clause (1).

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]