

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 2491 OF 2021

Suresh Dharmashi Gala

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. R.V. Govilkar a/w. Ms. Shaba N. Khan a/w. Jitendra Pathadhe for
the Petitioner

Mr. Niranjan Mundargi i/b. Keral Mehta for the Respondent No.3
Ms. S.D. Shinde, APP for the Respondent – State

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 25 NOVEMBER 2021

P.C. :-

Heard the learned Counsel for the parties.

2. This Petition is filed for quashing of the FIR No.150 of
2019 with the following prayer :-

*(a) This Hon'ble Court be pleased to quash and
set aside the FIR bearing No. 150 of 2019 registered
under Section 51, 63 of the Copyright Act, 1957*

registered at Narpoli Police Station, Bhiwandi on 15 March 2019 for the offence punishable under Section 63 and 51 of the Copyright Act, 1957 as well as chargesheet bearing No.I-10/2020 dated 02/02/2020 filed by the Respondent No.1 with the learned Judicial Magistrate, First Class, Bhivandi, District – Thane, thereunder, in the interest of justice by the Respondent No.2, as well as all subsequent proceedings emanating therefrom in view of the compromise/settlement arrived between the Petitioner and Respondent No2.”

3. The ground on which the Petition is filed for quashing of the FIR is that there is a settlement arrived at between the Petitioner and the Respondent No.3 represented through the Respondent No.2. The learned Counsel for the Petitioner and the Respondent Nos. 2 and 3 state that in view of the settlement of this dispute which is purely a commercial dispute, the FIR be quashed by consent of the Respondent Nos. 2 and 3 and they seek to rely upon the decision of the Apex Court in the case of *Gian Singh v/s. State of Punjab and Anr*.¹. Writ Petition taken up for disposal with consent.

4. The Respondent No.2 is a representative of the Respondent No.3. The Respondent No.3 has a registered trademark “Eurobond” in respect of Aluminium Panel Sheets. It is the case of the Respondents that the Respondent No.2 – Original Complainant that on 15 March 2019, it was discovered that the Petitioner had stored certain aluminium composite panels which were having

¹ (2012) 10 SCC 303

marked 4Mann Eurobond and also that there were plates of Eurobond Panel Products. With an allegation that the Petitioner had committed offences under Section 51 and 63 of the Copyright Act in respect of the trademark of the Respondent No.3 that the FIR came to be lodged.

5. The learned Counsel for the Petitioner and the Respondent Nos.2 and 3 have drawn our attention to the consent terms which are filed in Interim Application (L) No. 9715 of 2021 in Commercial IP Suit No. 157 of 2014 filed by the Respondent No.3. The learned Counsel for the Petitioner and the Respondent Nos.2 and 3 state that the parties have agreed that the Petitioner will not use the trademark Eurobond and has agreed for certain course of action. It is submitted that in the light of these consent terms which are taken on record by the learned Single Judge of this Court, the Respondent Nos.2 and 3 do not intend to proceed further with the FIR that they have lodged.

6. The Respondent No.3 has filed an affidavit wherein the Respondent No.3 has stated as under :-

“(i) I say that, this Hon’ble Court vide its order dated 15 June, 2015 passed in Notice of Motion (L) No. 2584 of 2014 restrained Eurobond Industries Private Limited (presently known as 4MANN Industries Private Limited) from using the impugned Eurobond trademark

and device or any other mark containing the words EURO or EUROBOND or the device of globe comprised within the arms of 'U' or any other mark identical to or deceptively similar with the Respondent No.3's registered trademark under No.1165712 in Class 6 in respect of any goods falling within Class 6 of the IV Schedule to the Trade Marks Act, 2002, so as to infringe the same. The said order was upheld by the Division Bench of this Hon'ble Court vide its order dated 4 December 2018 passed in Commercial Appeal No.115 of 2017 in Notice of Motion No.1142 of 2015.

(ii) Despite the aforesaid orders passed by this Hon'ble Court, 4MANN Industries Private Limited continued to sell their infringing goods in the market bearing the infringing trademark or device, in disregard to the orders of this Hon'ble Cour. Accordingly, the Respondent No.3 was constrained to initiate contempt proceedings i.e. Contempt Petition (L) No.78 of 2019 inter alia against 4MANN Industries Private Limited and the Petitioner.

(iii) Meanwhile, the Respondent No.3 through Respondent No.2 i.e. Original Complainant, also identified the warehouses and godowns where 4MANN Industries Private Limited stored the infringing goods bearing the infringing trademark of the Respondent No.3.

(iv) Since the infringing goods were inter alia stored at Bhiwandi godown, the Respondent No.2 i.e. Mr. Mangesh Prasad Shirodkar, representative of E.I.P.R. Private Limited filed a complaint with the Narpoli Police Station Bhiwandi on 15 March 2019 at the behest of Respondent No.3 through E.I.P.R. Private Limited with respect to the infringement of the Respondent No.3's

registered trademark. I say that, Police registered a FIR No.150 of 2019 against the Petitioner under Section 51 and 63 of the Copyright Act, 1957. Pursuant to the said FIR, the infringing goods manufactured/stored by the Petitioner/Eurobond Industries Private Limited, have been seized by the Police Authorities from the warehouse of Petitioner/Eurobond Industries Private Limited located at Bhiwandi.

(v) Thereafter, I say that the Respondent No.3 and Petitioner (4MANN Industries Private Limited) who is duly authorized to represent the Company without any limitation or objection have amicably resolved their disputes and the Petitioner (4MANN Industries Private Limited) have submitted to this Hon'ble Court for a Decree of favour of Respondent No.3 in Commercial IP Suit No.157 of 2014 as per the Resolution passed by 4MANN Industries Private Limited in this regard identifying the Petitioner as the concerned person for the execution and indemnity and undertakings to be provided to the Hon'ble Court in this regard. A copy of the Order dated 3 May 2021 passed by this Hon'ble Court in Commercial IP Suit No.157 of 2014 is hereto annexed and marked as Exhibit "B". In view of the aforesaid Consent Terms and order dated 3 May 2021, I am unconditionally giving consent for quashing the FIR No.150 of 2019 dated 15 March 2019 registered by Narpoli Police Station, Bhiwandi against the Petitioner for the offence punishable under Section 51 and 63 of the Copyright Act, 1957 and all proceedings emanating from the same.

(vi) In view of the aforesaid, I am hereby giving unconditional consent and no objection for quashing the FIR No.150 of 2019 dated 15 March 2019 registered by Narpoli Police Station, Bhiwandi filed against the

Petitioner for the offence punishable under Section 51 and 63 of the Copyright Act, 1957 as well as chargesheet bearing No.I-10/2020 dated 02/02/2020 filed by the Respondent No.1 with the learned Judicial Magistrate, First Class, Bhiwandi, District Thane and all proceedings emanating from the same and accordingly pray that this Hon'ble Court be pleased to allow the Present Writ Petition absolute in terms of prayers as prayed for by the Petitioner.

(vii) I say that, I am filing this affidavit for quashing of the subject FIR and the proceedings arising there from out of my free will and the Respondent No.3 or anyone on behalf of Respondent No.3 shall not challenge the Order passed by this Hon'ble Court quashing the subject FIR.”

7. The Apex Court in the case of *Gian Singh* in respect of powers of the High Court to quash the FIR in the cognizable offence by consent has observed thus :-

“ The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. 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. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled

their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse

of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

8. Perusal of the FIR and consent terms show that the dispute is a commercial dispute between the parties which they intend to resolve and proceed further with their respective businesses. In view of the consent terms and the affidavit filed, it is quiet clear that the Respondent Nos.2 and 3 will not support the prosecution. Keeping the prosecution pending will obstruct the settlement which already arrived at and will cause needless harassment to both the parties. In view of the law laid down by the Apex Court and that nothing adverse is shown to us as to why it should not be made, applicable. The Writ Petition is allowed in terms of prayer clause (a)

9. Order accordingly.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

**JYOTI
PRAKASH
PAWAR**

Digitally signed
by JYOTI
PRAKASH PAWAR
Date: 2021.11.30
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