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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.739 OF 2021

Arjun Umesh Zaveri .. Applicant

v/s.

The State of Maharashtra And Anr. .. Respondents

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Mr. Satyaram Gaud, for the Applicant.

Mrs. A.S.Pai, PP, for Respondent State.

Mr. Aniket Nikam, i/b. Mr. Vivek Arote, for Respondent No.2.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 23 NOVEMBER 2021.

P.C:-

This application is filed seeking to quash FIR No.124 of 2021 filed against the Applicant under Section 406 of Indian Penal Code on 31 March 2021 with Worli Police Station, Mumbai.

2. The Applicant and Respondent No.2 are related. Respondent No.2 is the maternal aunt of the Applicant.

3. Respondent No.2 filed the FIR with the allegation that Respondent No.2 was entrusted with an expensive car worth Rs.43

lakhs in September 2019 with the Applicant for a day. He did not return the same and, accordingly, committed an offence under Section 407 of IPC. The application was filed for quashing this FIR before this Court on 1 June 2021. After the application was filed, the charge-sheet was filed before the Metropolitan Magistrate at Dadar and in the civil proceedings filed between the parties, which was referred to Lok Adalat, consent terms were arrived at on 25 September 2021. Based on these consent terms, in which Respondent No.2 had consented for quashing of the FIR, amendment is carried out to the application and the FIR is now sought to be quashed with the consent of Respondent No.2.

4. The learned Counsel for the Applicant and Respondent No.2 have drawn our attention to the consent terms filed and they state that respective clients are standing by the commitments recorded in the consent terms. The learned Counsel for the Applicant has also drawn our attention to the statement of Respondent No.2 that the FIR itself was lodged due to a misunderstanding. In light of the stand taken before us, which is reflected in the consent terms, we do not find any impediment in quashing the FIR by consent of Respondent No.2, as the case is squarely covered by the law laid down by the Apex Court in the case of *Gian Singh vs. State of Punjab And Another*¹. The reading of the FIR states that it is purely a family matter and does not have any repercussions on the society at large. The consent terms,

¹ (2012) 10 Supreme Court Cases 303

where the parties have agreed for course of action, are as follows:-

- “1. That plaintiff and defendant both have settled their overall disputes amicably without any coercion, fraud and pressure of any kind and same is absolutely voluntary.*
- 2. That apart from the present civil suit, there are other litigation filed and pending before the different court of law, which are as under:*
 - (a) Defendant has filed a criminal complaint against the plaintiff by way of lodging FIR with Worli Police Station bearing its C.R. No. 124 of 2021 for an alleged offense punishable u/s 406 of IPC and in such matter, plaintiff is protected with an anticipatory bail order passed by this Hon’ble Court and moreover in such matter, police has filed charge sheet and presently matter is pending in the file of 62nd Court of Ld. Metropolitan Magistrate at Bhoiwada (Dadar), Mumbai bearing its C.C. No. 765/PW/2021.*
 - (b) Plaintiff has also filed quashing petition before Hon’ble High Court bearing its Cri. APL (Stamp) No. 10746 of 2021 in merit and same is scheduled for hearing on 04.10.2021 before the Division Bench of His Lordship Justice S.S. Shinde & Justice N.J. Jamdar.*
 - (c) Plaintiff has also approached 40th Court of Ld. Metropolitan Magistrate, Girgaum, Mumbai bearing its C.C. No 37/SW/2021 by way of filing a criminal complaint against the defendant and her son Abhishek Kothari with prayer of 156 (3) of Cr. P.C. and same is scheduled for passing order on 29.09.2021, in light of the amicable settlement being rendered through mediation at the Lok Adalat, the Plaintiff hereby admits that the subject*

matter of C.C. No. 37/SW/2021 is arising out of a Misunderstanding between the Parties and that the Plaintiff consents to withdrawal of the complaint filed by him under Section 156(3) of the Cr.P.C. through C.C. No. 37/SW/2021 against the defendant and her Son, additionally the Plaintiff agrees he would fully co-operate for withdrawal of the criminal proceeding without delay and all present consent terms is strictly to quashing of the criminal proceeding.

3. *In light of above multiple litigations, both the parties have arrived to settlement terms viz firstly Defendant agree to record her No Objection/Consent before the Hon'ble High Court in above pending quashing petition i.e. Cri. APL (Stamp) No. 10746 of 2021 by converting same into quashing of FIR/Proceeding by consent on scheduled date 04.10.2021 and on such other date by filing an consent reply affidavit therein mentioning the sentence that **"The Subject FIR is lodged against the Plaintiff out of Misunderstanding"** and also remain present before the Division Bench of His Lordship Justice S.S. Shinde & Justice N.J. Jamadar, the aforementioned is strictly subject to the condition subsequent which the courts may record in its order, that the proceedings instituted by the Plaintiff in 40th Court of Ld. Metropolitan Magistrate, Girgaum, Mumbai bearing its C.C. No. 37/SW/2021 against the defendant and her son are withdrawn, which would be undertaken as a statement before the Hon'ble High Court during the proceedings of quashing the above mentioned F.I.R. The consent of the Defendant to withdraw the aforementioned F.I.R. is contingent on the Plaintiff withdrawing C.C. No. 37/SW/2021, and this fact shall be recorded by the Hon'ble High in its order. It is agreed by the defendant that she would fully co-operate for quashing of the criminal proceeding without any delay and all present consent terms is strictly subject to quashing of the criminal proceeding.*

4. *Defendant even reiterates in the present consent terms before the Lok Adalat that FIR which was before the Worli Police Station bearing its of C.R. No. 124 of 2021 u/s 406 of IPC which is presently pending in form of C.C. No. 765/PW/2021 before the 62nd Court of Ld. Chief/Addl Metropolitan Magistrate Bhoiwada, Dadar Mumbai, against the present defendant is lodged “**out of misunderstanding**”, and he is withdrawing all his adverse allegations against the defendant, subject to strict condition that defendant would also consent to withdraw police case i.e. C.R. No. 124 (C.C. 765/PW/2021) and same is quashed.*
5. *Secondly, defendant also agreed to pay a lump sum compensation of Rs. 500,000 (Rupees Five Lakhs only) to the plaintiff forthwith either by way of RTGS/Demand Draft, subject to condition that Plaintiff will withdraw his 156(3) complaint as referred above within a space of 05 working days from the date of such withdrawal and if for any reason above compensation is not paid after withdrawal of 156(3) complaint, then defendant in present civil suit shall liable to pay 500% of above compensation amount to the plaintiff and plaintiff shall be at liberty to adopt all legal recourse to recover such amount.*
6. *In return to such lump sum compensation which is to be paid by the defendant, plaintiff give up and surrender all his rights, claim and interest with respect to subject Mercedes Car bearing its RTO Registration number MH-47-AB-0033 in the name of the defendant and plaintiff would also handover the RC Card to the defendant forthwith, it is thereafter there would not be any claim counter claim between the parties against the said subject car.*
7. *Plaintiff also record his consent to withdraw the present subject suit which is pending before City Civil Court on the coming scheduled date, as well as criminal complaint which is*

pending before 40th Court of Ld. Metropolitan Magistrate, Girgaum, Mumbai bearing its C.C. No. 37/SW/2021 in view of above terms.

8. *The parties shall not initiate any litigation against each other and thereby instituting any criminal or civil proceedings arising out of any issue which may have emanated between the parties in the past, therefore, all past grievances, whether acknowledged or taken cognizance or not, hereby stand resolved by way of this amicable settlement arising out of the mediation conducted by the Lok Adalat.”*

5. Therefore, considering the totality of the circumstances, we are of the opinion that a case is made out for allowing the application and it is, accordingly, allowed in terms of prayer clause (b).

6. The Applicant and Respondent No.2 will individually pay costs of Rs.25,000/- to the Police Welfare Fund as costs. The costs to be paid within period of four weeks from today and the order is made conditional on payments of the costs.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)