

Mandira
Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.301 OF 2021

Anand Krishna Kumar,	]	
Age-28 Years, Occupation : Student,	]	
Residing at near Jain Temple, B-3,	]	
Adarsh Building, George Nagar,	]	
J.B.Nagar, Andheri (East),	]	
Mumbai – 400 059	]	.. Petitioner

VERSUS

1. The State of Maharashtra,	]	
through the Wakola Police Station,	]	
Mumbai	]	
	]	
2. Harinder Rampujan Tiwari,	]	
60 years, residing at Room No.2,	]	
Chawl No.16, Krupa Shankar Singh	]	
Chawl, Gamdevi Road, Indira Chowk,	]	
Near Pawar House, Kandivali (East),	]	
Mumbai – 400 101	]	.. Respondents

Mr.Satyavrat P. Joshi a/w Mr.Nitesh Mohite for
the Petitioner.

Mr.Sumant Deshpande for Respondent No.2.

Respondent No.2 present in Court.

Dr.F.R.Shaikh, APP for the Respondent/State.

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

DATED : 1ST FEBRUARY, 2021

ORAL JUDGMENT (PER S.S.SHINDE, J.)

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

2. This petition is filed for the following substantial relief :-

“(a) that this Hon’ble Court may be pleased to exercise its power under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, and may be pleased to quash and set aside the Criminal Case bearing CC No.3043/PS/2017, which is pending on the file of the learned Metropolitan Magistrate, Bandra, Mumbai, arising out of CR No.20/2016 which is registered with the Wakola Police Station, Mumbai.”

3. Learned counsel appearing for the petitioner and respondent No.2 jointly submit that the parties have amicably settled the dispute and respondent No.2 has filed affidavit-in-reply and also further affidavit stating therein that it is his voluntary act to enter into such settlement and pray for quashing of the impugned FIR and the charge-sheet.

4. Respondent No.2 is present before this Court. He stated that he does not wish to proceed further with the aforesaid case against the petitioner and give consent for quashing the FIR and the impugned charge-sheet.

5. We have heard the learned counsel appearing for the parties and with their able assistance, perused the affidavit filed by the petitioner and affidavit-in-reply filed by respondent No.2. In the affidavit filed by the petitioner, it is stated as under :

“2. I say that I have amicably settled the dispute with the Respondent no.2. In the light of these circumstances, the further proceedings in the charge-sheet bearing CC No.3043/PS/2017, which is pending on the file of the learned Metropolitan Magistrate, Bandra, Mumbai arising out of the C.R.No.20 of 2016 registered with the Wakola Police Station, Mumbai needs to be quashed.

3. I say that I have amicably settled the dispute with respondent no.2. In these circumstances in order to compensate Respondent No.2 in terms of the injuries sustained by him and the medical expenses incurred by him, I am paying an amount of Rs.1,50,000/- to Respondent No.2 herein by way of a Demand Draft no.224279 drawn on Central Bank of India dated 28/01/2021 and the same would be paid to Respondent No.2 in the Court premises itself in presence of all the parties.

4. I say that pursuant to the directions of this Hon'ble Court I am paying an amount of Rs.1,50,000/- to Respondent No.2 herein by way of a Demand Draft no.153996 drawn on Kotak Mahindra Bank dated 01/02/2021 and the same would be paid to Respondent No.2 in the Court premises itself in presence of all the parties.

5. I say that pursuant to the directions of this Hon'ble Court I am paying an amount of Rs.25,000/- to Police Welfare Fund by way of a Demand Draft no.153997 drawn on Kotak Mahindra Bank dated 01/02/2021 and the same would be hand over to the Additional Public Prosecutor in the Court premises itself in presence of all the parties.

6. I say that I am filing the present Affidavit on my own volition and free will, without there being any pressure, coercion and/or force upon me.

7. I say that I am filing the present Affidavit on the basis of my free will and I have not been influenced or induced by anybody to file the present Affidavit.”

6. Respondent No.2, in his affidavit-in-reply, states as under :

“1. I say that I have decided to amicably resolve the dispute with the Petitioner. In the light of these circumstances, the further proceedings in connection with C.R.No.20 of 2016 registered with the Wakola Police Station, Mumbai needs to be quashed qua the Petitioner.

2. I say that pursuant to the amicable settlement of the dispute, I have received a DD of Rs.1,50,000/- and another DD of Rs.1,50,000/- from the Petitioner.

3. I say that, in the light of the fact that I have amicably settled the dispute with the Petitioner, I have no objection if the criminal proceedings in CC No.3043/PS/2017 instituted in the court of Ld Metropolitan Magistrate, Bandra, Mumbai arising out of the C.R.No.20 of 2016 registered with the Wakola Police Station, Mumbai is quashed and set aside against the Petitioner.

4. I say that this Affidavit is in addition to the Affidavit dated 27th January, 2021 filed by me in the present matter.

5. I say that I am filing the present Affidavit on my own volition and free will, without there being any pressure, coercion and/or force upon me.

6. I say that I am filing the present Affidavit on the basis of my free will and I have not been influenced or induced by anybody to file the present Affidavit.”

7. Learned counsel appearing for the petitioner, has handed over two demand drafts to the learned counsel appearing for respondent No.2, in turn, the learned counsel appearing for respondent No.2 has given those demand drafts to respondent No.2, who is present in Court. In addition to these two demand drafts, the petitioner is willing to deposit Rs.25,000/- in the Police Welfare Fund.

8. Since the parties have amicably settled the dispute and respondent No.2 does not wish to pursue the allegations in the FIR and depose against the petitioner, continuation of further proceedings arising out of the said FIR, would be an exercise in futility and would tantamount to abuse of process of the Court.

9. 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 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.

1 2012 (10) SCC 303

10. Since respondent No.2 has filed the affidavit and contended that he has no objection for quashing the impugned FIR and the charge-sheet, chances of conviction of the petitioner would be bleak and remote.

11. In the light of discussion in foregoing paragraphs and averments in the affidavit filed by the petitioner and the affidavit-in-reply filed by respondent No.2, we are of the considered view that to secure the ends of justice and to prevent the abuse of the process of the Court, the petition deserves to be allowed.

12. The writ petition is allowed. Rule is made absolute in terms of prayer clause (a).

13. However, it is made clear that this order will take effect only after the petitioner would deposit an amount of Rs.25,000/- in the Police Welfare Fund, the details of which are as under :

Name : CPWF DGP MAHARASHTRA STATE, MUMBAI

Bank : AXIS BANK

A/c No. : 914010029005759

14. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)