

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5375 OF 2019

Mr. Jenish Bharatkumar Doshi]
Aged 29 years,]
Residing at 501, Gokul Apartment]
Anand Nagar, Dahisar (E),]
Mumbai – 400068]..... Petitioner.

versus

1] The State of Maharashtra]
(At the instance of Andheri Police Station)]
2] Mr. Vikram Motiram Brahmane]
Age 47,]
Room No.F/12, Trnsit Camp]
Kokarcagar, 19 Foot Road,]
Wadala, Mumbai]..... Respondents.

Mr. Bhavesh M Thakur for the Petitioner.
Mr. J P Yagnik, APPP for the Respondent No.1/State.
Mr. Kukund Pandya for the Respondent No.2.
Respondent No.2 present.

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

DATE : 13th August 2021

ORAL JUDGMENT (PER S.S. SHINDE, J

1 At the outset the learned counsel appearing for the Petitioner seeks
leave to amend. Leave granted. Amendment to be carried out forthwith.

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

3 This Petition is filed for the following substantial relief :-

(b) *That C.C. No.1347/PS/2019 presently pending before Ld. Metropolitan Magistrate 65th Court at Andheri, Mumbai arising out of C.R. No.98 of 2018 registered by Andheri Police Station for the commission of offence under Section 279, and 338 of the Indian Penal Code may be quashed and set aside.*

4 The learned counsel appearing for the Petitioner and the 2nd
Respondent jointly submit that the parties have amicably settled the dispute.

5 The 2nd Respondent has filed the affidavit. Paragraphs 1 to 5 of the
said affidavit are reproduced herein under for ready reference.

“1 *I say that I am original complainant in C. R. No.98 of 2018 registered with the Andheri Police Station under Sections 279, 338 of the Indian Penal Code. I say that the said crime was registered pursuant to my complaint. After completion of investigation the investigating officer has filed chargesheet and it is registered as C.C.No.1347/PS/2019 before Ld. Metropolitan Magistrate, 65th Court, Mumbai.*

2 *I say that registration of the aforesaid offence was outcome of misunderstanding in respect of Traffic signal as in hurry to cross the road, I didn't realize the signal and while corss the road and due to which accident took place. I say that Petitioner immediately took me to my house and from there, I went to Sion Hospital where I was admitted for 15-20 days.*

3 *I say and submit that I have no complaint against the*

Petitioner as he has agreed to compensate me for Rs.60,000/- which takes care of my medical expenditure. I say and submit that Petitioner has already paid amount of Rs.30,000/- via NEFT on 16.07.2021 and balance Rs.30,000/- will paid by an Pay Order dated 13.08.2021 drawn on HDFC Bank which will be handed over at the time of hearing before this Hon'ble Court. I say and submit that considering my physical condition and also most of time I reside at my native place and therefore it is more difficult for me to attend the Ld. Trial Court during Trial.

- 4 *In view of the aforesaid facts and circumstances, I am no more interested in pursuing the in FIR No.98 of 2018 and Proceedings arising out of said FIR bearing CC No.1347/PS/2019 pending at the file of Ld. Metropolitan Magistrate, 65th Court, Andheri, Mumbai. Hence I am filing the present Affidavit at my own free will. I say that no one including the Petitioner abovenamed has influenced me by any pressure, threat, duress and/or conspiracy so as to compel me to file the present Affidavit.*
- 5 *I respectfully submit that I have no objection to quas the proceedings bearing No.CC No.1347/PS/2019 pending at the file of Ld. Metropolitan Magistrate, 65th Court, Andheri, Mumbai be taken on record and the aforesaid crime be quashed.”*

6 The Petitioner and the 2nd Respondent are present before this Court. The parties are identified by their respective advocates. We have interacted with the 2nd Respondent. During interaction the 2nd Respondent has stated that it is his voluntary act without coercion to arrive at amicable settlement and file the affidavit before this Court and join the prayer of the Petitioner for quashing the impugned FIR/Chargesheet. Upon perusal of the averments of the affidavit filed by the Respondent No.2, it is evident that, the

2nd Respondent has arrived at amicable settlement with the Petitioner.

7 Since the Petitioner and the 2nd Respondent have amicably settled the dispute, no fruitful purpose would be served by continuing the further proceedings in CC No.1347/PS/2019 arising out of CR No.98 of 2018 pending before the learned Magistrate, 65th Court at Andheri, Mumbai.

8 In view of the averments in the affidavit filed by the 2nd Respondent, it is crystal clear that the 2nd Respondent is not going to support the allegations in the FIR and the chances of conviction of the Petitioner would be bleak and remote.

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

1 2012 (10) SCC 303

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 Mr. Bhavesh Thakur, the learned counsel appearing for the Petitioner, on instructions of the Petitioner graciously submits that, the Petitioner will pay Rs.50,000/- to the 2nd Respondent in addition to the amount already paid to him and the Petitioner will also deposit an amount of Rs.15,000/- in the below mentioned account of the Bar Council of Maharashtra and Goa Covid-19 within a period of three weeks from today.

Bank Name : Bank of India
Branch Name : Main Branch, Fort, Mumbai
A/c. Name : “Bar Council of Maharashtra and Goa Covid-19”
A/c. No. : 000110110013597
IFSC Code : BKID0000001

11 In the light of the discussions in foregoing paragraphs and keeping

in view of the observations made by the Supreme Court in Giansingh's case (supra), and in order to secure ends of justice and to prevent the abuse of process of law/court, the Writ Petition deserves to be allowed.

12 The Criminal Writ Petition is allowed in terms prayer clause (b) subject to payment of Rs.50,000/- by the Petitioner to the 2nd Respondent by way of Pay Order/Demand Draft, and subject to deposit of Rs.15,000/- by the Petitioner in the aforesaid account of the Bar Council of Maharashtra and Goa Covid-19 within a period of three weeks from today.

Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

13 List the Writ Petition under the caption "For Compliance" on 21st September 2021.

14 All concerned parties to act upon an ordinary copy of this order duly authenticated by the Court Sheristedar.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]