

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5956 OF 2019

Rajiv Chandulal Darji]
Age 39 years, Occupation Business,]
Residing at : 402, Ruby Crescent,]
Business Boulevard,]
Ashok Chakravarty Road, Ashok Nagar]
Kandivali (East), Mumbai – 400 101]..... Petitioner.

Versus

1] The State of Maharashtra]
Through Charkop Police Station,]
at Mumbai, Mumbai.]
2] Amul Navnitlal Raval]
Age 53 years, Occupation Doctor]
3] Smita Amul Raval]
Age 53 years, Occupation Doctor]
Both Residing at : 301 Shivneri Cooperative]
Housing Society, Plot No.252, Sector 5]
Charkop, Kandivali (East), Mumbai]..... Respondents.

Mr. Anilkumar K Patil for the Petitioner.

Mrs. M H Mhatre, APP for the Respondent No.1/State.

Mr. Adesh Agarkar a/w Mr. Swapnil Chopde and Mr. Ashish Agarkar i/by White
& Brief Advocates & Solicitors for Respondent No.2.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 09th MARCH 2021

JUDGMENT : (PER S S SHINDE, J.)

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

2 The learned counsel appearing for the Petitioner and Respondent No.2 submits that the parties have amicably settled the disputes. It is also submitted that the Consent Terms have arrived at between the parties. The said Consent Terms are placed on record in Commercial Suit No.384 of 2016 before this Court. It is submitted that on the basis of said Consent Terms all the Civil disputes between the parties have been dissolved.

3 The 2nd Respondent has filed the affidavit dated 07.01.2020, which is already taken on record. The 2nd Respondent in Paragraphs 1 to 5 of the said affidavit has stated thus :-

- “1 I say that I had lodged a complaint against the present Petitioner Mr. Rajiv Darji bearing C.R. No.9 of 2016 on 07.01.2016 against Vinod Bhatia, Bharat Bhushan and the present Petitioner Mr. Rajiv Darji with Charpok Police Station at Mumbai for offences under Section 406 and 34 of the Indian Penal Code, 1860.
- 2 I say that charge sheet came to be filed in the aforesaid complaint on 08-10-2019 having Criminalo Case NO.273/PW/2018 in the Ld. Additional Chief Metropolitan Magistrate, 24th Court,l Borivali, Mumbai.
- 3 I say that thereafter the present Petitioner that is Mr. Rajiv Darji and I had mutually agreed to settle all the pending disputes (Criminal and Civil) and in lieu of the same, consent terms between me and the Petitioner Mr. Rajiv Darji came to be filed in Commercial Suit No.384 of 2016 on 09.12.20216.
- 4 I say I have no objection with regards to the prayers of the present petition and that the Hon’ble Court may

quash and set aside the charge sheet dated 08.10.2019 in Criminal Case No.273/PW/2018 arising out of C. R. No.9 of 2016 with respect to the present Petitioner Mr. Rajiv Darji.

5 I say that the present Affidavit is given by me voluntarily and I have read the contents of the same before signing the same and the same is prepared as per my instructions.

4 The 2nd Respondent is present before this Court. He stated that it is his voluntary act to enter into such amicable settlement and he has no objection in allowing this Writ Petition.

5 In view of settlement arrived at between the parties, no fruitful purpose will be served in continuing the further proceedings in Criminal Case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali Mumbai, arising out of C. R. No.09 of 2016 dated 07th January 2016 registered with Charkop Police Station, Mumbai, at the instance of the Respondent No.2 for the alleged offences under Section 406, 420 read with Section 34 of Indian Penal Code.

6 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ has held that, the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial,

¹ 2012 (10) SCC 303

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.

7 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Petitioner in the impugned FIR, and further continuation of proceedings in Criminal Case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali Mumbai, arising out of C. R. No.09 of 2016 would tantamount to the abuse of the process of the Law/Court. Since the first informant i.e. the 2nd Respondent is not going to support the allegations in the FIR, the chances of conviction of the accused

would be remote and bleak.

8 It is pertinent to note at this stage that though the parties have resolved/settled their disputes between them and approached this Court for quashing of the charge sheet dated 08th October 2019 in Criminal Case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali Mumbai, arising out of C. R. No.09 of 2016 dated 07th January 2016 registered with Charkop Police Station, Mumbai at the instance of the Respondent No.2 for the alleged offences under Section 406, 420 read with Section 34 of Indian Penal Code, we deem it appropriate to impose costs of Rs.25,000/- (Rupees Twenty Five Thousand only) on the Petitioner. Accordingly we direct the Petitioner to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) within two weeks from today with the Children's Aid Society, Mumbai, who in turn transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai.

9 For the reasons stated herein above, the Criminal Writ Petition is allowed in terms of prayer clause (B) subject to depositing Rs.25,000/- (Rupees Twenty Five Thousand only) by the Petitioner within two weeks from today, which read thus :-

(B) That this Hon'ble Court may be pleased to issue Writ of certiorari or any other Writ in nature of Certiorari or any

other appropriate Writ and thereby quashing and setting aside the impugned Charge sheet dated 08th October 2019 in Criminal Case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate 24th Court, Borivali Mumbai, with respect to C. R. No.09 of 2016 dated 07th January 2016 registered with Charkop Police Station, Mumbai, at the instance of the Respondent No.2 for the alleged offences under Section 406, 420 read with Section 34 of Indian Penal Code.”

10 As directed herein above, within two weeks from today, the Petitioner shall deposit Rs.25,000/- (Rupees Twenty Five Thousand only) in the Bank of Children’s Aid Society, Mumbai details of which are as under:-

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

11 On deposit of costs of Rs.25,000/- (Rupees Twenty Five Thousand only) by the Petitioner in the aforesaid bank account, the Children Aid Society, Mumbai shall immediately transfer the said amount of costs for betterment of the children to the New and Additional Children’s Home, Mankhurd, Mumbai. Payment of aforesaid costs is a condition precedence for allowing this Criminal Writ Petition and this order will take effect after depositing the costs amount by the Petitioner.

12 Rule is made absolute to the above extent and the Criminal Writ

Petition stands disposed of accordingly. List the Petition under caption “For Compliance” for deposit of costs on 30/03/2021.

[MANISH PITALE, J]

[S. S. SHINDE , J]