

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

CRIMINAL APPLICATION NO. 286 OF 2021

Mr. Ashok Virchand Doshi and Anr. ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

...

Mr. Meghadeep Oak for Applicant.

Ms. Swapna P. Kode, for Respondent No.2.

Ms. G.P. Kulekar, APP for State.

...

**CORAM : S. S. SHINDE &
N. R. BORKAR, JJ.**

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date: 2022.02.15
17:44:03 +0530

DATE : 14th FEBRUARY, 2022.

ORAL 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. This application is filed alongwith following substantive prayers:-

a. This Hon'ble court be pleased to quash the entire FIR arising out of C.R. No.242/2013 registered with Dharavi Police Station, Mumbai for the offences punishable u/s 326, 341 r/w 34 and 120 (B) of the Indian Penal Code lodged by Respondent No.2.

b. The Hon'ble Court be pleased to quash entire Charge sheet and proceedings bearing no.PW/325/2014 before the Ld. Metropolitan Magistrate, 12th Court, Bandra arising out of C.R. no.242/2013 registered with Dharavi Police Station;

3. At the outset, learned counsel appearing for the applicants and contesting respondents jointly submit that parties have amicably settled the dispute. The 2nd respondent has filed consent terms and same are placed on record in the compilation of this application from pages 32 to 34. The 2nd respondent has also filed affidavit which is part of the compilation of the application.

4. On the basis of consent terms, so also, the averments in the affidavit filed by 2nd respondent, the learned counsel appearing for the applicants and 2nd respondent prays that the application may be allowed and impugned first information report and charge-sheet may be quashed and set aside. They jointly submits that proceedings bearing No. PW/325/2014 arising out of C.R. No. 242 of 2013 pending on the file of the learned Metropolitan Magistrate Bandra, Mumbai, may also be quashed.

5. Learned counsel appearing for the applicants invite attention of this Court to the exposition of the Supreme Court in the case of *Giansingh v. State of Punjab and Another*¹ and submits that in the light of observation made by the Supreme Court in the said judgment the present application deserves to be allowed.

6. Ms. Swapna Kode, learned counsel appearing for 2nd Respondent submits that the parties have amicably settled the dispute and

¹ 2012 (10) SCC 303

in the interest of justice the present application may be allowed.

7. Ms. Mulekar, learned APP appearing for respondent/State invited our attention to the NC No.485 of 2013 registered against the applicants and submits that this Court may pass the appropriate order.

8. Heard Mr. Oak appearing for the applicants, learned APP appearing for State/respondent, learned counsel appearing for respondent No.2. Upon perusal of contents of FIR, charge-sheet and its accompaniments and weapon used by applicants and the injuries sustained by the victim, we are of the opinion that an ingredient of section 326 of the Indian Penal Code are not attracted in the present case.

9. The Supreme Court in the case of Giansingh v. State of Punjab and Another² 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

2 2012 (10) SCC 303

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.

10. Therefore, keeping in view in observation of the Supreme Court in the aforesaid judgment, there is no impediment to consider the prayer of the parties to allow this application on the basis of amicable settlement. It is true that there was earlier NC filed against applicant No.1. The allegation in the said NC are vague, and there is no specific overt act attributed to the applicant No.1. We need not reproduce the consent terms and the affidavit filed on behalf of the Respondent No.2. Upon perusal of averments in the affidavit filed by respondent No.2, suffice it to mention that, the 2nd respondent in his affidavit has stated that the matter is resolved peacefully and amicably between applicants and himself. The dispute arose on a misunderstanding. The civil dispute is pending wherein applicant No.1 is already party to said civil dispute, which has been mutually clarified and settled among the parties, in order to maintain peace and harmony. The 2nd respondent has stated that the said amicable settlement is not an outcome

of any coercion and they have willingly agreed to settle the dispute with the applicants.

11. On 04.02.2022 respondent No.2 was available for our interaction through video conference. We have interacted with 2nd respondent through video conferencing so as to insure that, whether the amicable settlement is with free will and without any coercion or otherwise. The 2nd respondent stated before this Court that he himself and applicants have mutually agreed to settle the dispute and differences and he has given consent to quash the FIR i.e. C.R. No.242 of 2013 registered at Dharavi Police Station, Mumbai and Original proceeding pending before the concerned trial Court. He further stated that whatever decision taken by him for settlement is without any undue influence, force and threat of the applicants.

12. In the light of discussion in forgoing paragraph, keeping in view the consent terms and affidavit filed by 2nd respondent and the fact that there are no any other cognizable offences pending against the applicants, we are inclined to allow this application, however, subject to payment of costs of Rs. 50,000/- by the applicants. Hence, we pass the following order:

ORDER

(1) The Criminal Application is allowed in terms of prayer clause (a) and (b), subject to depositing amount of Rs.50,000/- by the applicants jointly within three weeks from today.

(2) Applicants shall deposit Rs. 25,000/- in the following account-

Bank Name: Axis Bank Ltd.
Branch Name: Worli, Mumbai- 400 025.
A/c. Name: Police Welfare Fund.
Account No. 914010029005759
IFSC Code: UTIB0000060

(3) The balance amount of Rs. 25,000/- shall be deposited with the Tata Cancer Hospital, Mumbai in the following account-

Bank Account No. 1002449683
Bank Name Central Bank Of India
Branch TMH
Bank Address Parel, Mumbai: 400 012
Bank MICR Code 400016112
Bank IFS Code CBIN0284241
Account Type Current

(4) As already observed depositing aforesaid amount is condition precedent for allowing the present application.

(5) The application stands disposed of accordingly.

(N. R. BORKAR, J.)

(S. S. SHINDE, J.)