

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4752 OF 2021

Sarosh Nadirshaw Karani & Anr. ...Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Ms. Tanvi Mahadik i/b Rahul Arote for the Petitioners.

Mr. Karl P. Rustomkhan i/b Mohsin Pathan for Respondent No. 2.

Mr. J. P. Yagnik, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : May 6, 2022.

P. C. :

1. At the outset, learned counsel appearing on behalf of the Petitioner orally prayed for an amendment to the petition by incorporating the correct number of criminal proceeding appearing in the prayer clause, which is CC No.300/PW/2011. Leave granted. Necessary amendment be carried out forthwith.

2. By the present writ petition filed under Article 226 of Constitution of India, the Petitioners have sought the quashment of pending prosecution against them in a criminal case bearing CC No.300/PW/2011 pending on the file of Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai, wherein the allegations levelled against the Petitioners are for the offences punishable under sections 465, 468 ad 471 read with 34 of the Indian Penal Code, 1860. The said proceeding is an offshoot of MECR

proceeding bearing No.1 of 2009, which was initiated by Respondent No.2 herein.

3. The allegations levelled against the petitioners, briefly stated, are that by creating a forged No Objection Certificate in the name of deceased grand-father of complainant – R. N. Korawala, who had expired in the year 1948, the accused persons (petitioners herein) got transferred the electricity bill in the name of Society.

4. The learned Counsel appearing for the respective parties submitted that during the on going trial of above criminal proceedings, with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petition is filed for quashing the above criminal proceedings, by consent of original complainant - Respondent No.2 herein.

5. In the present writ petition, Respondent No.2 has filed an affidavit dated 15th September 2021 wherein he has categorically stated that he is no more interested in pursuing the subject criminal proceedings / FIR against the the Petitioners. In paragraph 3 of the affidavit, he has stated that the registration of aforesaid offence was outcome of civil disputes, misunderstanding and misconceptions between the Petitioners and himself. He has further stated that he supports the averments of the Petitioners made in writ petition and he has prayed that the subject FIR and all consequential proceedings be quashed.

6. Respondent No.2 is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the FIR / criminal proceedings in question instituted at his instance against the Petitioners for the offence punishable under sections 465, 468 and 471 read with 34 of the Indian Penal Code, 1860.

7. It can, thus, be seen that the matter has been amicably settled between the parties. On perusal of record, it transpires that the allegations are personal in nature. There is no element of public law involved in the crime. It appears that the dispute has a civil flavour. The offence alleged cannot be said to have any impact on the society. Furthermore, the parties have settled the matter between themselves, as they have decided to keep harmony between them to enable them to live with peace and love. The compromise records that they have no grudge against each other and the complainant has specifically agreed that he has no objection if the FIR in question is quashed. Further, both the parties have undertaken not to indulge in any litigation against each other and withdraw all the complaints pending between the parties before the court. As they do not intend to proceed with any criminal case against each other, the continuance of the criminal proceedings in the aforesaid FIR / case will be a futile exercise and mere wastage of precious time of the court as well as investigating agencies.

8. In these circumstances, and especially, in view of the law laid

down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the subject criminal proceedings in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

9. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings in question. Accordingly, writ petition is made absolute in terms of prayer clause (b). However, we also find it would be appropriate to saddle the Petitioners with the cost of Rs.10,000/- each, which shall be paid to the TATA Memorial Hospital, an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said cost and produce the receipts thereof on the file of this Court within the period of ten weeks from today. Failing to pay cost and produce receipts within stipulated time, petition shall stand dismissed automatically without further reference

to the Court and order quashing the proceedings / FIR shall be treated as *non-est*.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]