

Chitra Sonawane

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

WRIT PETITION NO.3535 OF 2022

1. Hasmukhrai Shantilal Jain
Age 57 yrs, Occ: business
r/o 1, Sangeeta Apartment CHSL,
Kurar village, Malad (E),
Mumbai- 400 097.

2. Shivaji Bhimsen Thakur
Age 62 yrs, Occ: business
r/o Flat no.1303, Shree Vallabh Yog,
Pushpa Park, Malad(E), Mumbai-400 097.

3. Dhiraj Shivpratap Singh
Age 39 yrs, Occ: business
r/o of Room no.3, Deviprasad
Tiwari chawl, near Hanuman Temple,
Pratap Nagar Malad (E),
Mumbai -400 097.

... Petitioners.

Vs.

1. The State of Maharashtra
through Sr. Police Inspector,
Kurar Police Station,

2. Kashmira Anil Goswami @ Pandey
Age 45 yrs, Occ: Doctor,
r/o Flat no.1301, Solitaire Heights,
NEw Golden NEst Phase 11,
Opp. Jain Bunglow, Bhayandar (E),
Thane- 401105.

... Respondents.

**CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.**

DATE : 21 NOVEMBER 2022.

Mr.Umesh B. Yadav, for the petitioners.
Mrs. P.P. Shinde, APP for State.
Mr.B.A. Lawate for respondent no.2.
Mr.S.R.Salunkhe, PSI Kurar police station.

ORDER (Per R. N. Laddha, J.)

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties. Learned APP waives notice on behalf of respondent no.1.

3. By this criminal writ petition, the petitioners seek to quash the FIR No.363 of 2008 lodged with the Kurar Police Station for the alleged offences punishable u/s 452, 504, 506(II) r/w Section 34 of the Indian Penal Code, which culminated in filing criminal case no.751/PW/2009 pending before the learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai. Quashing is sought on the premise that the parties have amicably settled

their dispute and that respondent no.2 has no objection to the quashing of the same.

4. The allegations made against the petitioners are that on 5.12.2008, petitioner no.2, along with petitioner no.3 and petitioner no.4 (since deceased), on instructions of petitioner no.1, forcibly entered upon respondent no.2's hospital premises and asked them to vacate the same. At that time, they abused and threatened the husband of respondent no.2 with dire consequences.

5. Perused the papers. Learned Counsel for the petitioners and the learned Counsel for respondent no.2 submitted that the alleged incident between the parties was purely on account of a misunderstanding and that the alleged incident occurred due to some trivial issues of civil nature and no harm or injury was caused to anybody.

6. Learned Counsel for the petitioner submitted that petitioner no.1 had let out a shop to the husband of respondent no.2. As there was a dispute in regard to the said shop, petitioner no.1 filed a suit before the Small Causes Court at Bandra against

the husband of respondent no.2. The suit was partly decreed. Thereafter, on 23.1.2012, petitioner no.1 filed an execution application bearing no.15 of 2012 before the Small Causes Court. Pursuant thereto, possession warrant was issued and petitioner no.1 was put in possession of the said premises on 19.3.2012. After that on 25.10.2012 petitioner no.1 filed a mesne profit application before the Small Causes Court at Bandra, Mumbai praying to determine the mesne profit. In this mesne profit application, petitioner no.1 and the husband of respondent no.2 arrived at an amicable settlement and resolved all their dispute and misunderstanding to put to an end to all the litigation and proceedings, both civil and criminal, by filing a Consent Terms dated 20.7.2022 wherein respondent no.2 was a consenting party.

7. Respondent no.2 has filed the affidavit dated 13.8.2022 duly affirmed before the Notary. In this affidavit, respondent no.2 stated that due to a trivial dispute, FIR no.363/2008 was registered at her behest. However, she has no objection to quashing the said FIR. Respondent no.2 is present in person. On questioning, she reiterates what is stated by her in her affidavit and

further states that she has no objection to the quashing of the aforesaid FIR bearing 363 of 2008 registered with the Kurar Police Station against all the petitioners. Respondent no.2 has been identified by her Counsel. We are informed that the charge sheet is already filed against the petitioners.

8. Apart from what is stated above, we find that basically the dispute between the petitioners, on the one hand, and respondent no.2, on the other, is civil in nature. Considering the nature of the dispute, the relations between the parties, the amicable settlement between them, the affidavit of respondent no.2, the compromise deed entered into between the parties and having regard to the judicial pronouncements of the Apex Court in *Gian Singh Vs. State of Punjab and Another and Narinder Singh & Ors. Vs. State of Punjab and Anr.*, there is no impediment in allowing the petition.

9. The petition is, accordingly, allowed, and the FIR No.363 of 2008 lodged with the Kurar Police Station, which culminated in filing criminal proceedings being C.C.No.751/PW/2009 pending on the file of learned Metropolitan

Magistrate, 67th Court, Borivali, Mumbai, is quashed and set aside.

This is, however, subject to the condition that respondent no.2 shall pay the cost of Rs.15,000/- and all the applicants together shall pay the cost of Rs.15,000/- to the **Mumbai Police Welfare Fund bearing Account No.465010100008693, IFSC NO.UTIB0000465** within three weeks from the date of order.

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

11. Learned Counsel for Respondent No.2 to file his Vakalatnama, if not filed, within two weeks of the uploading of this order.

12. All parties are to act on an authenticated copy of this order.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.