

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4524 OF 2022

1. Manoj Kumar Sahu
2. Bosco John D'mello ... Petitioners
Versus
1. State of Maharashtra
2. Kalpesh Anant Shinde ... Respondents

Mr. Chaitanya Malgaonkar a/w Sagar Naik i/b Akshay Gosavi, for the Petitioners.

Mr. Y. M. Nakhwa, APP for the Respondent No.1 – State.

Mr. D. J. Shah, for the Respondent No.2.

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.

DATE : 15th DECEMBER, 2022.

P. C. :

Heard learned Counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Learned Counsel Mr.Shah waives notice on behalf of the respondent No.2.

3 By this Petition, preferred under Article 226 of the

REKHA
PRAKASH
PATIL

Digitally signed
by REKHA
PRAKASH PATIL
Date: 2022.12.19
17:29:24 +0530

Rekha Patil

1/5

Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek quashing and setting aside of the FIR bearing C.R.No. 174 of 2019, registered with the Gamdevi Police Station, Mumbai, for the alleged offences punishable under Sections 392 r/w 34 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4 Perused the papers. According to the respondent No.2 (original complainant), the incident took place on 13/08/2019. He has stated that the petitioner No.1 was driving the vehicle belonging to the petitioner No.2 and that the petitioner No.2 was sitting on the rear seat of the car; when the traffic signal turned red, his motor cycle collided with the petitioner No.2's car from the rear side, resulting in the petitioner No.2's new car being damaged; and that pursuant thereto, there was an altercation between the petitioners and him. The respondent No.2 has further alleged that the petitioner No.2 asked the petitioner No.1 to remove the key of the respondent No.2's motorcycle, since he was refusing to pay for the damages caused to the vehicle; and that damages were being sought as the

petitioner No.2's brand new Innova Car was damaged. As the petitioners took the respondent No.2's motorcycle key, the respondent No.2 lodged the aforesaid FIR, as against the petitioners alleging the aforesaid offences.

5 After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, being C.C. No. 578/PW/2019.

6 In the interregnum, during the pendency of the aforesaid proceeding, the parties amicably settled their dispute. Learned Counsel for the respondent No.2 has tendered an affidavit of the respondent No.2 dated 7th November, 2022 duly notarized before the Notary. In the said affidavit, the respondent No.2 has stated that the matter is amicably settled between the parties and he has no objection to the quashing of the said case.

7 The respondent No.2 is present in person before the Court. On being questioned, he re-iterates what is stated by him in his

affidavit. He has been identified by his Counsel. Learned Counsel for the respondent No.2 has tendered a photo copy of the Adhar Card of the respondent No.2 duly attested by him. The same is taken on record and the learned APP has verified the original Adhar Card of the respondent No.2.

8 Prima facie, taking the prosecution case as it stands, no offence as alleged under Section 392 of the IPC is disclosed against the petitioners. We fail to understand, in the facts, how the police could have even invoked the said section. The application of the Section 392 clearly reveals non application of mind by the police.

9 Be that as it may, the parties have amicable settled the dispute, the respondent No.2 has filed his consent affidavit, there is no impediment in allowing the Petition.

10 Accordingly, the Petition is allowed and the FIR bearing C.R.No. 174 of 2019, registered with the Gamdevi Police Station, Mumbai, as against the petitioners and consequently, the proceeding pending before the learned Metropolitan Magistrate, 40th Court,

Girgaon, Mumbai, being C.C. No. 578/PW/2019 are quashed and set aside.

11 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

12 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.