

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 458 OF 2008

Pawan Suresh Gupta ... Petitioner
Versus
The State of Maharashtra & Another. ... Respondents.

WITH
WRIT PETITION NO. 425 OF 2008

Sanjeev Rajkishore Bhargava and Anr. ... Petitioners
Versus
The State of Maharashtra & Another. ... Respondents.

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Mr.Ashish Chavan, Mr.D.J. Kakalia, Ms.Bhavna Singh Jaipuria,
Mr.Paresh Patkar i/by Mulla and Mulla CBC for the Petitioners in both
the petitions.

Mr.K.V. Saste, APP for the Respondent-State.

Mr.Zishan Quazi i/by Mr.Prabhanjay Dave, for Respondent No.2 in
both the petitions.

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CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

DATE : June 05, 2023.

ORDER (Per : Sharmila U. Deshmukh, J.):

1. By these petitions filed under Article 227 of the
Constitution of India and Section 482 of the Code of Criminal

Procedure, 1973, the Petitioners seek to quash and set aside Criminal Case No.325/PW of 2007 pending before the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai.

2. Mr.Chavan, learned Counsel for the Petitioner submits that during the pendency of the proceedings, the parties have amicably settled the matter. He submits that during the pendency of the present petitions, in the Execution Application No.1443 of 2015 filed in Arbitration Petition No.629 of 2009 the consent terms dated 21st September, 2021 were entered into between the parties. He tenders the said consent terms and the order dated 16th March, 2022, which are taken on record.

3. Mr. Quazi, learned counsel appearing for the Respondent No.2-Complainant in both the Petitions does not dispute the position that the parties have amicably settled their disputes. He has tendered the consent affidavit of Vishal Kedia, Director and Authorised Representative of the Respondent No.2 in Writ Petition No.458 of 2008. The same is taken on record. As regards the Writ Petition No 425 of 2008, the consent Affidavit has been filed by Kamal Kedia, Director and Authorised Representative of the Respondent No.2.

The deponent of the Affidavit in Writ Petition No.425 of 2008 is present in person and have been identified by his counsel and through his Aadhar card, a copy whereof has been produced and taken on record.

4. Perused the papers. It appears that the Petitioners were employed with one Birla Group of Companies from whom the Respondent No.2–Complainant has sought financial assistance by way of hire purchase facilities as well as loan facilities and due to default in repayment civil and criminal proceedings were initiated by Birla Growth Fund Limited, so also by exercising the rights under the agreements, five of the vehicles were repossessed. The allegation is that forged documents were prepared in respect of the five vehicles and the Complainant company was cheated.

5. The settlement agreement dated 17th September, 2019 executed between the parties, form part of the consent affidavits of the Respondent No.2 in and Clause 10 of the settlement agreement records that the Respondent no.2–Complainant has accorded their consent to quash and set aside the Criminal Case No.325/PW of 2007. The resolution of the Respondent No.2-Complainant

authorising the deponent of the affidavit to file present affidavits is also annexed to the concerned affidavits of the Respondent No.2.

6. It appears that the dispute between the parties pertain to the non-fulfillment of the terms of the agreement. The dispute appears to have overtones of civil nature and now the parties have decided to give quietus to the dispute. Considering the compromise entered into between the parties and having regard to the consent affidavits of the respondent No.2-Complainant, we find that continuation of the proceedings being Criminal Case No.325/PW of 2007 would be an exercise in futility.

7. In view of the above, we find no impediment in allowing the petition, and as such, the following order.

ORDER

(a) Criminal Case No.325/PW/2007 pending before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra at Mumbai and all proceedings arising out the said criminal case are hereby quashed and set aside subject to the payment of costs of Rs.25,000/- each to be paid by the Petitioner in Criminal Writ Petition No.458 of 2008 and Criminal Writ

Petition No.425 of 2008, and Rs.25,000/- by the Respondent No.2.

(b) The costs to be deposited in the account of Central Police Welfare Fund, Director General, M.S. Mumbai, (Account No.914010029005759, IFSC Code-UTIB0000060, Axis Bank, Worli, Mumbai (MH)], within a period of three weeks from today and the receipt evidencing the payment of costs to be filed with the Registry in the present petitions.

(c) Needless to state that in event, the costs as directed above are not deposited within specified period, the order of quashing the proceedings will stand recalled and the petitions to be listed for direction within a period of one week thereafter.

(d) Writ petitions stand disposed of in the above terms.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]