

Nikita

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

**WRIT PETITION NO.2957 OF 2021**

Ashok Anand Rao ... Petitioner  
V/s.  
Sanjay Hariprasad Kanoji & Anr. ... Respondents

Mr. Osman A. Chishty i/b Jivan S. Hiwrale for the  
Petitioner.

Mr. Yuwraj D. Patil, for Respondent No.1.

Mr. M.R. Tidke, APP for the State.

**CORAM : AMIT BORKAR, J.**

**DATED : MARCH 28, 2023**

**P.C.:**

1. Challenge in this petition is to the order dated 27<sup>th</sup> November 2020, passed by the learned Judicial Magistrate First Class Nashik Road, in Summary Criminal Case No.975 of 2015, below Exhibit-38. The petitioner herein filed an application for dismissal of complaint based on compromise entered into between the parties. Joint pursis below Exhibit-23, is the basis of filing such application. The Joint pursis is based on two factors.

(I) The petitioner shall assist complainant in his legal consultancy services as and when required.

(II) The petitioner shall pay the amount of Rs.3,00,000/- on

or before 9<sup>th</sup> March 2016.

2. To oppose U+0074he application for recording of compromise, the complainant submitted that the first clause of compromise namely to assist the complainant in his legal services has not been complied with, therefore, according to him the reduced amount of Rs.3,00,000/- agreed between the parties towards full and final statement of cheque. According to him, the consideration for reduction of amount of Rs. 3,00,000/- was the factum of services to be rendered by the petitioner in future. Therefore, first clause of compromise pursis cannot be read in isolation. According to him, first clause of the compromise is integral part of compromise as a whole which is indivisible in nature.

3. The petitioner disputes the said position. According to him, the agreement to assist the complainant in his legal services is void ab initio and, therefore, such contract can neither be enforced nor has any legal sanctity in law. According to him, both clauses of compromise operate in independent spheres and there is no overlapping. According to him, therefore, by performing his part of contract by paying an amount of Rs.3,00,000/-, the dispute between the parties stand conclusively settled.

4. On perusal of the impugned order, it appears that the contention raised by the parties before this Court have not been adverted to by the learned Magistrate. It is, therefore, necessary that the question as to whether clause (I) of the joint pursis is integral part of contract being question of facts needs to be

adjudicated upon by the learned Magistrate. It is, therefore, necessary that both the parties should appear before the Magistrate and shall make their submissions.

5. For the aforesaid reasons, the impugned order dated 27<sup>th</sup> November 2020, passed by Judicial Magistrate First Class, Nashik Road, in Summary Criminal Case No.975 of 2015 is quashed and set aside.

6. The Magistrate shall decide application below Exhibit-38 in the light of observations made above.

7. The non-bailable warrant issued against the petitioner during pendency of present petition stands cancelled.

8. The writ petition stands disposed of in above terms. No costs.

**(AMIT BORKAR, J.)**