

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 157 OF 2017**

Kinner Pankajbhai Lakhani & Anr. ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

WITH**CRIMINAL WRIT PETITION NO. 1856 OF 2024**

Braj Nandan Sharma ... Petitioner

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Ashok M. Saraogi for Petitioners in WP/157/2017.

Mr. Vaibhav V. Ugle for Petitioner in WP/1856/2024.

Mr. S.V. Gavand, A.P.P. for Respondent No.1-State.

Mr. Aditya Mithe for Respondent No.2.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 8th May 2024.

P.C. :

1) Present Petitions under Article 226 of the Constitution of India are filed for quashing of M.E.C.R. No. 05 of 2017 dated 19th January 2017 registered with M.I.D.C. Police Station, Andheri, Mumbai, under Sections 405, 406, 415, 420 read with 34 of the Indian Penal Code (I.P.C.) registered against the Petitioners.

2) As per the record, the lodgment of the present crime is in pursuance of an Order dated 3rd January 2017 passed below Exhibit-1 in C.C. No. 535/SW/2015 filed by the Respondent No.2.

2.1) Initially the complaint was filed by Mr. Nilesh Thakkar, in whose place his brother Mr. Mitesh Thakkar was subsequently replaced and therefore Mr. Mitesh Thakkar lodged present crime as the complainant/informant.

3) Learned Advocate for Petitioners submitted that, though Writ Petition No. 157 of 2017 was filed for quashing of the said crime on merits, during the pendency of the Petition, the Petitioners and Respondent No.2 settled their disputes and differences amicably and the Respondent No.2 has given his consent for quashing of the crime in question. He submitted that, the basic dispute between the Petitioners and Respondent No.2 is of civil nature, arising out of a partnership and a business enterprise. He submitted that, as the Respondent No.2 has now given his consent, the said crime in question may be quashed.

3.1) Writ Petition No. 1856 of 2024 is filed by the original Accused No.3 as per the F.I.R., for the same reliefs as prayed for in Writ Petition No. 157 of 2017.

3.2) Learned Advocate for the Petitioners on instructions submitted that, till date the police have not filed chargesheet in the present case.

4) Record indicates that, as per the First Information Report given by the Respondent No.2, Mr. Rameshwar Ray has been named as an accused No.4 in the said crime. Mr. Mithe, learned Advocate appearing for Respondent No.2, on instructions, submitted that, no role of any specific nature has been attributed to the said accused in the present crime and therefore on instructions states that, the Respondent No.2 is dropping the name of Accused No.4 Rameshwar Ray from the array of accused persons. We accept the said statement made before this Court.

5) Learned Advocate for Respondent No.2 submitted that, the Respondent No.2 has filed an Affidavit dated 21st March 2024 duly affirmed before a Notary Public. In the said Affidavit, the Respondent No.2 has admitted the fact of amicable settlement between the parties and has given his no objection for quashing of the crime in question against all the Petitioners.

5.1) Respondent No.2 is personally present in the Court and through his Advocate reiterates the contents of his Affidavit dated 21st March 2024 and his 'no objection' for quashing of the crime in question.

6) In view thereof, we are inclined to quash M.E.C.R. No. 05 of 2017 dated 19th January 2017 registered with M.I.D.C. Police Station, Andheri, Mumbai.

7) As we expressed our opinion for quashing of said M.E.C.R. No. 05 of 2017 dated 19th January 2017 registered with M.I.D.C. Police Station,

Andheri, Mumbai, both the learned Advocates appearing for the respective Petitioners submitted that, the Petitioners will jointly and severally pay a cost of Rs.1,00,000/- to the Advocates' Association of Western India Generation Next Fund, Mumbai, within a period of two weeks from the date of uploading of Order. The said statement is accepted as an undertaking given to this Court.

8) We direct the Petitioners to pay jointly and severally a cost of Rs.1,00,000/- to the Advocates' Association of Western India Generation Next Fund, Mumbai, within a period of two weeks from the date of uploading of present Order on the official website of Bombay High Court.

8.1) Details of the bank account for payment of cost are as under :-

Account Name :- Advocates Association of Western
India Generation Next.

Account Number :- 000110110007807.

Bank Name :- Bank of India.

Branch Name :- Mumbai Main.

IFSC Code :- BKID0000001.

8.2) Petitioners to deposit the said cost within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

9) In view of above and subject to payment of cost, the Petitions are allowed in terms of prayer clause (a).

10) It is made clear that, if the cost is not paid within stipulated period as mentioned above, the Petitions shall stand revived automatically and in that event, the Investigating Officer shall complete the investigation of M.E.C.R. No. 05 of 2017 expeditiously.

11) List the Petitions on board on 12th June 2024, under caption 'for reporting compliance' of present Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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