Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2755 OF 2026

Mohamad Salim Khan .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

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- Mr. Durgesh Vaish a/w Ms. Shantidevi Vaish, Advocates for Petitioner
- Ms. Rajeshree V. Newton, APP for State
- Mr. Parmeshwar Andil, Advocate for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 9, 2026

P. C.:

1. Heard Mr. Vaish, learned Advocate for Petitioner; Ms. Newton, learned APP for State and Mr. Andil, learned Advocate for Respondent No. 2.

2. Present Petition is filed seeking quashing and setting aside of the FIR and the consequential proceedings, if any, arising therefrom.

3. On 21.08.2026, after hearing the learned Advocates appearing for the parties, the following order was passed:-

> *"1. Heard Mr. Vaish, learned Advocate for Petitioner and Mr. Karmakar, learned APP for Respondent.'*
>
> *2. This is a Petition seeking quashing of the FIR by consent. Learned Advocate persuaded the Court to quash the present proceedings on the basis of the documentary material which is placed on record. Since the issue pertains to quashing of the FIR with regard to Section 109 of the Bharatiya Nyaya Sanhita, 2023, I am not inclined to do so unless the Complainant presents himself. The learned Advocate informs the Court that on one occasion, the Complainant was present and is residing in Panvel. He would submit that it is very difficult for him to secure the presence of the Complainant and if*

required, he can persuade him to appoint an Advocate. I am making it very clear that unless the Complainant presents himself before the Court, specially when the matter is for quashing by consent, this Court will not determine the present Petition.

3. At the request of learned Advocate for the Petitioner, list the matter on ***28th August, 2026****."*

4. Today Respondent No. 2 – Complainant is present in Court. I have interacted with him. Consent affidavit dated 07.06.2026 filed by Respondent No. 2 is appended at page Nos. 25-28 of Petition. I have perused the same.

5. Considering the settlement between the parties and the reconciliation between them and the case of the Petitioner before me is clearly covered by the decision of Supreme Court in the case of ***Lovely Salhotra and Anr. Vs. State of NCT Delhi and Anr.*** **(Supra)**[1] and of this Court in the case of ***Alpesh Arvindbhai Patel and Others Vs. The State of Maharashtra and Other***[2] , there can be no impediment in allowing the present Petition for quashing of the Complaint *qua* the Petitioner before me who is accused No. 2 in the present crime.

6. Section 482 of the Criminal Procedure Code, 1973 conferred inherent powers on High Courts to pass such orders as are justified to give effect to any order in the Court, prevent abuse of process of any Court or secure the ends of justice. In the BNSS this provision stands incorporated with Section 528 which substantially reproduces the language and intent of Section 482 of the CRPC, 1973 High Courts

1 Criminal Appeal No.670 of 2017 decided on 10th April 2017

2 Criminal Writ Petition No.3721 of 2018 Decided on 17.03.2023

invoke this provision to step in where cases have been instituted with *malafide* motives or to harass the accused person thereby avoiding procedural harassment. It empowers Court to dismiss FIRs or criminal proceedings if there is no *prima facie* case or evidence against the accused person/s or if orders are made in violation of the principles of natural justice. The exercise of such powers under Section 482 of CRPC and now Section 528 of BNSS remains discretionary and varies from case to case.

7. In ***State of Harayana vs Bhajan Lal***[3] the Supreme Court laid down model categories and guidelines in paragraph No. 102 of the said judgment in which the FIRs can be quashed. The Supreme Court has furthered asserted that power under Section 482 is an acknowledgment of "powers inherent" and not the source of powers additional. It has held that even non compoundable offences can be quashed where necessary. It has held that High Courts have to decide whether the prosecution of an offence would further or be against the interest of justice. It is also held that grievous offences such as murder, rape, and dacoity cannot ordinarily be quashed even after settlement because they involve societal implication.

8. In the above context, when parties settle their private dispute or the *lis* between them is purely civil and commercial or matrimonial

3 1992 AIR 604

and the offence is not heinous or does not impact the society at large, the Court can consider such request. In such a case awarding costs for putting the criminal law into motion on the act of the accused persons and thereafter both parties seeking quashing of proceedings by consent, in my opinion, can be considered by Court which can impose costs on the parties, especially so in matters coming before the Court by “consent quashing”.

9. For above levy of costs the legal principle rests on the logic that criminal law cannot be used as a bargaining chip or a tool for private settlements after draining the State and judicial resources. In simple words, Courts cannot be used as a recovery mechanism to settle scores and/or bring the parties into subjugation. I am of the firm opinion that imposition of costs in consent quashing matters is required to be levied for three main reasons viz., wastage of public resources, consumption of valuable judicial time and for deterrence against vexatious litigation. This is because after criminal machinery is set into motion, the Police Department is forced to take cognizance, conduct investigations, attend courts, deploy personnel, collect evidence and draft chargesheets, all using public funds/ public exchequer. Equally substantial judicial time of the Trial Courts and Sessions Courts is wasted for handling a case, presentation of a case, issuance of summons, scheduling of trial dates, appointment of prosecutors and

their fees, etc. and ultimately if consent quashing is allowed such judicial time stands completely wasted, which could have otherwise been used for genuine Trial Court matters/ litigation. in one way such matters result in clogging the legal system and lead to humongous pendency which becomes difficult to tackle.

10. Another aspect to consider for imposing costs is that it curbs the growing trend of filing strategically exaggerated criminal complaints (especially matrimonial or commercial disputes) simply to force financial and legal settlements. In a given case made out on merits of the matter, even the Complainant can be put to costs while considering a quashing Petition purely on merits depending upon the facts of each case before Court. In some strong circumstances, even the State machinery can be put to costs if a purely civil dispute between parties strongly emanating from the facts on record is registered as criminal case and given the flavor of criminality. This Court is also equally conscious about not imposing costs blindly or mechanically if a particular party is not found to be remiss or at explicit fault for abusing the law, as also conscious about heinous offences impacting the society at large while considering consent quashing.

11. Applying the aforesaid principles to the facts of the present case, I am of the opinion that the Petitioner for his actions resulting in the complainant invoking criminal proceedings and now both the parties

seeking quashing by consent, the Petitioner should pay costs. Hence, Petitioner is directed to pay costs of Rs. 5000/- towards the Corpus of **A.K. Munshi Yojana** a trust which runs medical centres, vocational training centres and which also runs a Special School called **J.T. Sheth Mandbuddhi Vikas Kendra**, imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163.

12. Petitioner through his Advocate agree to pay the aforesaid costs amount to the charity within a period of two weeks from today..

13. In view of the above matter, the present Petition deserves to be allowed subject to payment of costs as directed herein above. It is so allowed in terms of prayer clause (a) which read thus:-

> *"a) Issue an appropriate writ, order or direction under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and be pleased to quash and set aside C.R. No. 243 of 2026 registered with Panvel City Police Station, Navi Mumbai, together with the charge-sheet, if filed, and all consequential proceedings arising therefrom, insofar as they pertain to the present Petitioner (Accused No. 2 Mohamad Salim Khan);*

14. List the Writ Petition for compliance of the order regarding payment of costs on **05th November, 2026**.

15. Advocate for the Petitioner shall remain present and show compliance on the returnable date for compliance. If he does not remain present and there is non-compliance of this order, Court will pass appropriate order for recall of this order, which shall be noted by the Petitioner.

16. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2026.10.13 12:04:52 +0530