

Sayali

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

**WRIT PETITION NO. 1473 OF 2014
WITH
WRIT PETITION NO. 1907 OF 2026**

**SAYALI
DEEPAK
UPASANI**

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Surekha Shailesh Gholap ... Petitioner
V/s.
The State of Maharashtra and Others ... Respondents

Mr. Sagar G. Talekar, for Petitioner.

Mrs. Megha Bajoria, APP for State-Respondent

Mr. S. G. Yadav, PSI, M. R. A. Marg Police Station.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2026

P.C.:

1. The present petitions are directed against the order whereby the learned Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, was pleased to reject the discharge application preferred by the petitioner in Criminal Case bearing CC No. 24/PW/2011, and further seek consequential quashing of the said criminal proceedings itself. The grievance of the petitioner is that though the material placed before the learned Magistrate did not disclose sufficient grounds for proceeding with the criminal prosecution, the prayer for discharge came to be

negatived without proper appreciation of surrounding circumstances. The petitioner therefore has approached this Court invoking inherent jurisdiction by contending that the continuation of criminal prosecution, despite subsequent developments and settlement between the parties, would result in miscarriage of justice. It is the case of the petitioner that once the substratum of dispute itself no longer survives and the allegations lose their criminal colour, the criminal proceedings ought not to be permitted to continue merely for formality. The legality and propriety of the said rejection of discharge application therefore forms the principal subject matter of challenge in these petitions.

2. The factual matrix as emerging from the record would indicate that respondent No. 2 had lodged MECR No. 08 of 2010 on 25 June 2010 making allegations against the petitioner that the petitioner, despite having full knowledge that the property proposed to be sold was forest land as well as agricultural land and therefore allegedly incapable of lawful transfer in the manner represented, induced respondent No. 2 into entering the transaction by promising sale thereof. It is alleged that acting upon such representation, respondent No. 2 paid an amount of Rs. 38 lakhs in cash and further Rs. 60 lakhs through cheque to the petitioner, whereafter a joint development agreement also came to be executed between the parties. The accusation is that later, when respondent No. 2 realised that the nature and status of the land was such that the transaction allegedly could not be

completed in the promised form, criminal action was initiated by lodging FIR against the petitioner alleging deception and dishonest inducement. During pendency of the said criminal proceedings, the petitioner moved an application seeking discharge on the ground that the dispute was essentially civil and contractual in character and that ingredients of criminal offence were absent. However, the learned Magistrate rejected the said application, which gave rise to filing of the present petitions before this Court. The entire prosecution, thus, originates from a commercial transaction between private parties relating to land and alleged non performance of obligations arising therefrom.

3. Learned Advocate appearing for the petitioner has invited attention of this Court to subsequent events which have transpired during pendency of the present petitions and which, according to him, materially alter the complexion of the matter. It is pointed out that in separate execution proceedings arising from an arbitral award between the self same parties, wherein the dispute pertained to the very same transaction and subject property, the parties entered into negotiated settlement and amicably resolved their disputes. It is submitted that under such settlement, the petitioner agreed to execute and has in fact executed a sale deed in favour of respondent No. 2 in respect of property admeasuring 5 acres, thereby substantially fulfilling the underlying commercial understanding between the parties. It is further brought to notice that apart from execution of the sale deed, the petitioner also issued cheque for amount of Rs.

1,25,000/ as part of the settlement arrangement. The submission therefore is that the very grievance which originally prompted initiation of criminal proceedings now stands redressed through mutual settlement and performance. According to the petitioner, once the parties themselves have resolved the dispute concerning the same subject matter in collateral proceedings, insistence upon continuation of criminal prosecution would be wholly unjustified and contrary to settled principles governing quashing of proceedings in matters having civil flavour.

4. The petitioner has further placed on record documentary material in support of his contention regarding compliance of settlement obligations. Learned counsel has tendered copy of bank account statement which prima facie reflects that the cheques bearing amounts of Rs. 1,25,000/ and Rs. 1,26,000/ respectively were duly encashed and honoured upon presentation. The said documentary material assumes significance since it demonstrates actual execution of financial component of settlement and is not merely indicative of promise remaining on paper. Once financial obligations forming part of settlement arrangement stand satisfied and corresponding payments are accepted, it becomes difficult to ignore that the parties have consciously chosen to bring quietus to their monetary and transactional disputes. Such conduct on part of parties becomes relevant while examining whether criminal prosecution should continue despite subsequent compromise. The honouring of the cheques therefore further strengthens the

petitioner's contention that settlement has been implemented in material particulars.

5. A further important aspect emerging from the record is that the consent terms filed before the Lok Adalat specifically contain Clause 3, wherein respondent No. 2 agreed that upon execution of the sale deed by the petitioner in terms of settlement, the criminal proceedings forming subject matter of present petitions shall be withdrawn. This clause is of material importance because it clearly evidences mutual understanding between parties that criminal proceedings were treated as incidental to the underlying commercial dispute and were agreed to be brought to an end once settlement obligations stood discharged. The petitioner asserts, and the material placed indicates, that on 06 August 2021 a registered sale deed in respect of 5 acres of land was duly executed, thereby satisfying the principal obligation cast upon him under the consent terms. Thus, according to petitioner, the reciprocal promise required to be performed by respondent No. 2 namely withdrawal of criminal proceedings has remained unfulfilled despite petitioner having acted upon the settlement. This conduct of respondent No. 2 in accepting benefits under settlement while refusing corresponding performance prima facie appears inequitable and contrary to the agreed arrangement. It is also required to be observed that the nature of allegations originally levelled, when examined in backdrop of subsequent settlement, appear to arise out of private commercial dealings and contractual obligations between two individuals and do not

disclose any element of public wrong as would affect society at large. The dispute appears to concern alleged breach of representations in property transaction and resultant financial consequences between private parties. Once parties themselves have treated the matter as capable of settlement and the complainant has agreed to withdraw prosecution after receiving benefit thereof, continuation of proceedings thereafter loses much of its foundation. Merely because respondent No. 2 has chosen not to honour his own commitment under Clause 3 cannot operate to prejudice petitioner who has already performed his obligations. The petitioner therefore cannot be denied equitable consideration merely because the opposite party failed to abide by the settlement after securing advantage thereunder.

6. Having regard to the aforesaid circumstances in totality, this Court is of considered opinion that the petitioner has made out sufficient case for exercise of inherent jurisdiction for quashing of proceedings. The dispute in question, on holistic appreciation, appears to be predominantly private and commercial in character, arising from land transaction and alleged failure of performance thereof, and the same has subsequently been settled between the parties through lawful consent arrangement. The material placed before this Court indicates substantial compliance of settlement by the petitioner, and the complainant has accepted benefits flowing therefrom. In such situation, to compel the petitioner to face continued

criminal prosecution despite settlement of substantive dispute would amount to permitting criminal law machinery to be used as instrument of oppression. Courts cannot ignore subsequent events when they affect continuation of cause of action. If proceedings are permitted to continue notwithstanding complete settlement of dispute and despite complainant's undertaking to withdraw the same, the same would result in abuse of process of law. Thus, this Court finds that the ends of justice require interference.

7. In view of the above discussion and considering the peculiar facts and circumstances of the matter, the Rule deserves to be made absolute.

8. Accordingly, the Rule is made absolute in terms of prayer clause (A) in both the petitions.

9. The impugned proceedings arising out of CC No. 24/PW/2011 pending before the Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, stand quashed and set aside. Consequentially, all further proceedings arising therefrom shall stand terminated. There shall be no order as to costs.

(AMIT BORKAR, J.)