

(2020) 09 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 1716 Of 2019

Vishal Mahesh Suple And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 324, 427, 504, 506

Citation : (2020) 09 BOM CK 0011

Hon'ble Judges : S. S. Shinde, J; M. S. Karnik, J

Bench : Division Bench

Advocate : Shivamsinh Deshmukh, Aarati V Deshmukh, F R Shaikh, Siddharth Jaiswal , Vivek S Kamtekar

Judgement

S. S. Shinde, J

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. This application is filed for the following relief :-

"That this Hon'ble Court be pleased to quash the CR No.205/2014 dated 15/06/2014 registered at the office of Amboli Police Station vide C.C. No.2353/PW/2014 for alleged offence punishable u/s. 427, 323, 324, 504, 506 r/w. 34 of Indian Penal Code, 1860 (as amended) on such terms and conditions as this Hon'ble Court may deem fit to grant in the circumstances of the case"

3. Respondent No. 2 - Mr. Vivek Kamtekar has filed an affidavit. In the said affidavit it is stated thus:-

"1. I say that, on the basis of my complaint the present FIR vide CR. No.205/2014 dated 15/06/2014 vide C.C No.2353/PW/2014 was registered at the office of Amboli Police Station for offences punishable u/s. 427, 323, 324, 504, 506 r/w 34 of Indian Penal Code, 1860 (as amended) against the aforestated Applicants.

2. I say that, the applicants and I have arrived at amicable settlement as the applicants have apologized me for incident 15/06/201, therefore, I have no further grievances against the applicants.

3. I say that, I do not wish to prosecute the Applicants through my complaint at the office of Amboli Police Station vide Cr No.205/2014 dated 15/06/2014,

C.C. No.2353/PW/2014 for offences punishable u/s. 427, 323, 324, 504, 506 r/w 34 of Indian Penal Code, 1860.

4. Therefore, I pray for withdrawal of my complaint against the aforesaid Applicants.

5. I say that I am quite convinced, and I am ready to withdraw back my complaint against the aforesaid Applicants provided that they promise to not repeat the incident dated 15/06/2019.

6. I say that, the Applicants have undertaken not to harass, torture or perform any such activity which is illegal by law in future.

7. I say that, I have no objection if this Hon'ble Court quashes my complaint lodged against the Applicants on any terms and conditions as it deems fit and proper."

4. Learned counsel appearing for the Applicants and Respondent No. 2 jointly submit that, since the parties have amicably settled the dispute, the FIR vide CR No.205/2014 registered at Amboli Police Station for the offences punishable under Sections 427, 323, 324, 504, 506, r/w 34 of the Indian Penal Code and the Charge-Sheet in question, may be quashed and the Criminal Application may be disposed of.

5. We have carefully perused the averments in the affidavit filed by Respondent No. 2, which are reproduced herein above.

6. The learned counsel appearing for the Applicants on instructions submits that the Applicants are ready to deposit the amount of Rs.50,000/-(Rupees Fifty Thousand only) in the following bank account :-

Bank Name : Bank of India.

Branch Name : Main Branch, Fort, Mumbai

Account Name : "Bar Council of Maharashtra and Goa Covid-19

Account No. : 000110110013597

IFSC CODE : BKID0000001

7. Respondent No.2 - Mr. Vivek Sitaram Kamtekar is present. We have interacted with him and on a specific query put to him as to whether he is willing and ready to settle the dispute in question amicably, he replied that it is his voluntary act to enter into the settlement. Respondent No.2 is identified by the learned counsel

Mr. Siddharth Jaiswal.

8. In that view of the matter and keeping in view the exposition of law in the case of *Gian Singh v. State of Punjab and Another*¹, in paragraph 61 it has been observed that to prevent abuse of the process of any Court or otherwise to secure the ends of justice in case parties have amicably settled the dispute, in that case, the High Court can quash FIR/Charge-sheet on the basis of alleged settlement except in cases of rape, murder, dacoity or the cases under the Special Statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. It has also been held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidance engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

9. In the present case also it appears from the averments of affidavit as well as interaction with Respondent No.2 through Video Conferencing and Telephonically that Respondent No.2 is not going to support the case of the prosecution and, the possibility of conviction is remote and bleak. In that view of the matter, continuation of the criminal proceedings on the basis of the FIR and Charge-sheet in question would be exercise in futility and it is the abuse of process of Court. In that view of the matter, we are inclined to allow the present Criminal Application in terms of prayer clause (a) on a condition that the Applicants to deposit the amount of Rs.50,000/- (Rupees Fifty Thousand only) in the following bank account :-

Bank Name : Bank of India.

Branch Name : Main Branch, Fort, Mumbai

Account Name : "Bar Council of Maharashtra and Goa Covid-19

Account No. : 000110110013597

IFSC CODE : BKID0000001

Hence, the following order:-

ORDER

1. FIR No. 205/2014 dated 15/06/2014 registered at the office of Amboli Police Station vide C.C. No.2353 for the offences punishable under Sections 427, 323, 324, 504, 506 r/w 34 of the Indian Penal Code and the Charge-sheet in question are quashed subject to Applicants depositing Rs.50,000/- (Rupees Fifty Thousand only) in the following account :-

Bank Name : Bank of India.

Branch Name : Main Branch, Fort, Mumbai

Account Name : "Bar Council of Maharashtra and Goa Covid-19

Account No. : 000110110013597

IFSC CODE : BKID0000001

2 We expect that the aforesaid amount shall be deposited in the said account within two weeks from today.

3 Parties shall abide by the terms of settlement arrived between the parties which are placed on record.

4 The order passed today will take effect only after depositing Rs. 50,000/- (in words rupees Fifty Thousand only) by the Applicants in the said account.

5 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.