

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

CRIMINAL WRIT PETITION NO. 4909 OF 2014

Jogesh @ Mitesh Navin Vaan & Ors.

.. Petitioners

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. A.M. Sarogi for the petitioners

Mr. K.V. Saste, APP for the respondent State

Mr. G.K. Savni for respondent no.2

Mr. A.G. Sarmbalkar, P.I. L.T. Marg Police Station present

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 7th JANUARY, 2015.

P.C.

1. Heard learned Counsel for the respective parties. This petition is filed under Article 226 of the Constitution of India under Section 482 of the Cr.P.C. for quashing the proceedings of criminal Case No. 203/PW/2013 arising out of FIR No.126 of 2011 for the offence punishable under Sections 406, 420, 411 r/w 34 of the IPC at the instance of respondent no.2 registered with L.T. Marg Police Station.

2. Respondent no.2 has filed an affidavit, affirmed on 18.12.2014.

In paragraph 3 of the affidavit, she has stated that in view of the settlement of the dispute between her and the petitioners, she has no objection if the FIR is quashed, subject to petitioners paying an amount of Rs.1 lakh to her and subject to the respondent no.1 handing over an amount of Rs.5,50,000/- and 18 grams gold lying with L.T. Marg Police Station, which came to be recovered during the course of the investigation.

3. The above petition was placed for orders on 19th December, 2014, on which day, the petitioner had made a statement before us that he had handed over cash of Rs.1,00,000/- to the respondent no.2 on 18th December, 2014. We had confirmed the said fact from respondent no.2, who was present. As regards the amount of Rs.5,50,000/- and 18 grams gold is concerned, learned APP had submitted that one Paresh Shah, brother of petitioner no.6 had raised an objection regarding the delivery of the same to the respondent no.2. Since the petitioners had undertaken to file the affidavit of Paresh Shah, we had adjourned the above writ petition to 7th January, 2015.

4. The petitioners have tendered before us the affidavit of Paresh Shah, affirmed on 6th January, 2015. In paragraph 2 of the affidavit, he has stated that he has deposited an amount of Rs.4,75,000/- with the police station. Initially he had raised an objection regarding payment thereof to the respondent no.2. In paragraph no.3, he has stated that since the dispute between the parties is amicably settled, he does not claim any right to the said amount and that he has no objection if the said amount is paid to the respondent no.2. Mr. Paresh Shah, is present in Court. On a specific query made by us, he stated that he has understood the contents of the affidavit and he has no objection to pay an amount of Rs.4,75,000/-, which was deposited with the police station to the respondent no.2.

5. The petitioners have not disputed that the balance amount of Rs.75,000/- and 18 grams of gold was recovered from them and the same is lying with the L.T. Marg Police Station. Mr. Sarogi, learned Counsel for the petitioners on the basis of instructions from petitioner nos. 2 and 3, makes a statement that the petitioners have no

objection if the 18 grams of gold and total amount of Rs.5,50,000/-, which includes the amount of Rs.4,75,000/- recovered from Paresh Shah and an amount of Rs.75,000/- recovered from them, is paid to the respondent no.2.

6. The respondent no.2 is also personally present in the Court. She has stated that she has gone through her affidavit which was affirmed on 18th December, 2014 and understood the contents thereof. On specific query made by us, she submitted that she has no objection if the criminal proceedings in question are quashed and set aside, subject to payment of Rs.5,50,000/- and 18 gram gold which is lying with the L.T. Marg Police Station. She has further stated that she has already received Rs.1,00,000/- from the petitioners. She has stated that she is making the statement on her own free will and without any undue influence and coercion by any person.

7. Mr. Saste, learned APP after taking instructions from his officer stated that the said amount will be handed over to the respondent

no.2.

8. In view of the settlement of the dispute, which is basically of personal nature and in the light of the ratio in the case of ***Narinder Singh Vs. State of Punjab (2014) AIR SCW 2065***, we are of the considered view that there is no impediment in quashing the criminal complaint.

9. Accordingly, the Writ Petition is allowed by passing following order :-

ORDER

(i) The C.R. No.203/PW/2013 arising out of FIR No.126 of 2011 registered under the provisions of Section 406, 420, 411, r/w 34 of the IPC registered by the respondent no.1 at the instance of respondent no.2, pending before the Metropolitan Magistrate's 47th Court at Esplanade, Mumbai is hereby quashed and set aside.

(ii) The respondent no.1 is directed to pay the amount of Rs. 5,50,000/- and 18 grams of gold lying with them, shown as recovery

from the petitioners, in connection with FIR No.126/2011 registered under the provisions of 406, 420, 411 r/w 34 of the IPC to the respondent no.2 without any security and / or bond of whatsoever nature.

(iii) Parties to act on copy of this order duly authenticated by the Court Associate of this Court.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)