

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 598 OF 2016

Maresh Kumar s/o Shadraprasad Mishra
and Others.

..Petitioners.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. D. G. Mishra i/b Bramnand Lexis for the Petitioners.

Mr. F. R. Shaikh, learned APP for the State.

Mr. Nilesh Das for Respondent No. 3.

Coram : RANJIT MORE &

V. L. ACHLIYA, JJ.

Date : February 11, 2016.

P. C. :

1. Heard the learned Counsel appearing for the respective parties and learned APP for the State. By this writ petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioners are seeking to quash FIR bearing No.703 of 2015 registered with MIDC Police Station, Andheri (East), Mumbai. The said FIR is registered at the instance of one

Mahendra Khade, the employee of Respondent No.3 wherein the allegations levelled against the Petitioners pertain to the commission of the offence punishable under section 420 of the Indian Penal Code, 1860. The allegations are that Petitioner No.1 at the relevant time was working as Account Manager of Respondent No.3. He transferred an amount of Rs.13 lacs from the bank accounts of Respondent No.3 Company to his relatives – Petitioner Nos.2 to 5 herein.

2. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into above FIR, with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petition is filed for quashing the above FIR by consent of original complainant Respondent No.3.

3. One Mr. Mahendra Vithhal Khadye has filed an affidavit on behalf of Respondent No. 3 Company, being Affidavit dated 11th February 2016. He has placed on record copy of the resolution passed at the Meeting of Board of Directors of Shachihata (India) Pvt. Ltd – Respondent No.3 whereunder he has been authorised to file affidavit

in the subject matter of present writ petition stating that Respondent No. 3 is not interested in continuing with the criminal prosecution of the Petitioners in subject FIR. As authorised, Mr. Khadye has solemnly affirmed that the Petitioners have settled the matter with Respondent No. 3 Company and therefore he is withdrawing all the allegations made against the Petitioners in the said FIR and that he has no objection for quashing the FIR in question against the Petitioners.

4. Said representative of Respondent No.3 Company is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit as per the instructions and directions given by Respondent No. 3 Company and it is made on his own free will, without there being any pressure or undue influence. He has further confirmed that Respondent No. 3 has no objection for quashing the FIR in against the Petitioners which is with regard to bank transactions of Respondent No. 3 company.

5. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is

no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as 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 subject FIR. Hence, petition is made absolute in terms of prayer clause (a). However, in the facts and circumstances of the case, we find it would be appropriate to saddle the Petitioners with the cost of Rs.1,00,000/-, [Rs. One lac only] which shall be paid to the "Tata Memorial Hospital" an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and

produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as *non-est*. Registry will then intimate the concerned Police Station that subject FIR or proceedings shall not be treated to have been quashed and that police / Magistrate shall proceed against the Petitioners in accordance with law.

6. Learned Counsel appearing for the Petitioners subject that since the subject FIR is quashed, the bank accounts of the Petitioners which were freezed by the police during the course of investigation need to be de-freezed. The learned Counsel appearing for the Respondent No. 3 and the representative of Respondent No. 3 who is present in Court have no objection for the defreezing the bank accounts of the Petitioners. Hence, bank accounts of the Petitioners as are mentioned in prayer clause (b) are hereby de-freezed.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]