

CRIMINAL WRIT PETITION NO.1318 OF 2016

Mr.A.H.Ponda i/by Mr.D.S.Bhatia for Petitioners.
Mr.K.V.Saste, APP, for Respondent no.1 State.
Ms.Pooja Khandeparkar i/by Jamshed Ansari for Respondent
no.2.

DATE : 8 June 2016

1. The Petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India as well as inherent power under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the first information report ('FIR') bearing CR No.499 of 2015.

2. The Petitioners are arraigned as accused nos.1 and 2 in the FIR dated 11 November 2015 registered with Wakola Police Station, Mumbai for offences under Sections 420, 465, 467, 468, 471 read with Section 34 of Indian Penal Code. The said FIR was registered at the instance of the second Respondent.

3. The Petitioners as well as the second Respondent have stated that the dispute which is subject matter of the FIR under challenge, has been amicably settled and, therefore, the present proceedings are initiated to quash the FIR in question, by consent of both parties.

4. Since the dispute has been settled, it is not necessary to discuss the nature of allegations reflected in the FIR in detail. A brief reference to the complaint may be made. It is stated in the FIR that the complainant had entered into various transactions regarding shares, re-listing of the companies and purchase of lands. It was alleged that the complainant had paid an amount of Rs.1.65 crores to accused no.1 and the balance amount of Rs.1.70 crores to accused no.3. On 21 January 2013, the accused and the complainant had arranged a meeting to resolve the dispute. The minutes of the said meeting were recorded wherein it was stated that the accused would return the said money to the complainant. The accused in total returned an amount of Rs.1.34 crores to the complainant and the balance was not returned. Hence, the second Respondent lodged the FIR.

5. The Petitioners had preferred an application for anticipatory bail before Sessions Court, wherein an interim order was passed in favour of the Petitioners. During pendency

of the said application, the parties have resolved the dispute and the consent terms were drawn. The terms and conditions of the settlement were recorded in the said consent terms, which was executed between the Petitioners and the second Respondent. In the said consent terms, it was recorded that the complainant does not wish to proceed against the Petitioners. The present petition is preferred by accused nos.1 and 2. However, it was submitted at the instance of the second Respondent that the dispute with accused no.3 is also being settled. However, in accordance with the terms of settlement with the said accused, appropriate proceedings will be initiated at the appropriate stage.

6. Learned counsel for the Petitioners and the second Respondent have submitted that they have amicably settled the dispute and with the consent of both the parties, the impugned FIR may be quashed. Learned counsel for the second Respondent submitted an affidavit affirmed by the complainant dated 1 April 2016. In the said affidavit it is stated that the second Respondent has amicably settled the dispute and he has no grievance against the Petitioners and that he do not wish to proceed against them for the alleged offences or allegations in the FIR. It is also stated that the complainant/Respondent no.2 has entered into and executed consent terms on 4 February 2016 and an addendum dated 31 March 2016 with the

Petitioners. The copies of consent terms dated 4 February 2016 and an addendum dated 31 March 2016 are annexed to the said affidavit. It is further stated in the affidavit that the complainant/Respondent no.2 has agreed to give consent for quashing the FIR out of his own free will and without any undue influence or coercion.

7. We have perused the contents of the petition, the documents annexed to it and the affidavit submitted by the complainant. From the said documents it is apparent that the parties have amicably settled the dispute. The second Respondent is not interested in pursuing the prosecution against the Petitioners. He has consented for quashing the FIR which is under challenge. Reliance can be placed upon a decision of the Apex Court in case of **Gian Singh Vs. State of Punjab and another**¹. The Apex Court in the said decision has observed that where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, 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 final settlement and compromise with the victim. In the light of the aforesaid

¹ (2012)10-SCC-303.

observations and taking into consideration the facts and circumstances of the present case, we are inclined to exercise the power of writ jurisdiction under Article 226 of the Constitution of India and inherent power under Section 482 of the Code of Criminal Procedure, 1973 and quash and set aside the impugned FIR.

8. Accordingly, Rule is made absolute in terms of prayer clause (a). Impugned FIR dated 11 November 2015 bearing CR No.499 of 2015 registered with Wakola Police Station, Mumbai for offences under Sections 420, 465, 467, 468, 471 read with Section 34 of IPC stands quashed and set aside as against present Petitioners, on the condition of the Petitioners depositing a sum of Rs.50,000/- (Rs.Fifty thousand only) with Police Welfare Fund within a period of three weeks from today. The Petitioners shall file receipt of aforesaid deposit within three weeks from today in the registry. The Wakola Police Station shall take cognizance of this order only if Petitioners produce an authenticated copy of this order, duly acknowledging receipt of payment as aforesaid, by the Registrar (Judicial-I).

(PD.NAIK, J.)

(NARESH H. PATIL, J.)