

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

CRIMINAL WRIT PETITION NO.1464 OF 2016

Ritesh Hasmukh Shah	.. Petitioner
V/s.	
The Senior Inspector of Police & Ors.	.. Respondents

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Mr. Vaibhav G. Bagade, Advocate for the Petitioner.
Pranothi Pawar, Advocate for Respondent No.2.
Mr. D. P. Adsule, APP for Respondent – State.

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**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : JULY 25, 2016.

JUDGMENT (Per PRAKASH D. NAIK, J.) :

Rule. Rule is made returnable forthwith.

2 Learned APP waives service for Respondent – State.

3 Petitioner has preferred this petition under Article 226 of the Constitution of India, as well as invoked section 482 of the Code of Criminal Procedure. Petitioner is seeking quashing of the First Information Report (for short “FIR”) registered with Samta Nagar Police Station vide C.R.No.17 of 2016 for offences punishable under Sections 406, 420, 506-II of the Indian Penal

Code (for short "IPC"). FIR has been registered at the instance of second respondent on 7th January, 2016.

4 Petitioner and second respondent have prayed that the impugned FIR may be quashed with the consent of both the parties on account of settlement arrived at between them.

5 The brief facts as alleged in the FIR are as follows:

- a) First informant and accused were carrying on business in share market on partnership basis from 2009 to 2011. Thereafter they conducted business independently. Both of them have cordial relationships.
- b) Accused was conducting business of investment in share market since 2011. On 1st February, 2013, accused visited house of complainant and represented that he is in financial constrains and is in need of personal loan of Rs.1 crore from complainant. He represented that he would return the money within a period of two years. He also affirmed payment of interest every month.
- c) Since accused was friend of complainant and considering his financial difficulty, complainant sold ornaments of his

wife as well as utilize his savings and parted with an amount of Rs.90 lakhs to accused on 18th February, 2013 and 9th April, 2013.

- d) However, thereafter the accused kept on delaying the payment of money. Complainant therefore approached him in August 2015 and demanded money. Accused agreed to return the amount and on calculating the amount of which comes to Rs.1,26,00,000/-. However, thereafter also accused avoided the payment.
- e) On 27th August, 2015 accused executed affidavit-cum-declaration and issued three post dated cheques totally amounting to Rs.1,26,00,000/-. However, thereafter he threatened complainant that he should not deposit the said cheques. Complainant deposited said cheques which were dishonoured with remark that "the account is closed". Thereafter, FIR was lodged on 7th January, 2016.

6 Petitioner/accused has contended that the dispute with complainant has been settled. In petition, it has been averred that petitioner was arrested on 26th March, 2016 in connection with the aforesaid FIR. He was produced before the

concerned Court for remand. While accused was produced for remand, settlement was arrived at between both the parties. First informant by an affidavit before the remand Court stated that accused had given a pay order to him. It was also stated that he has settled the dispute with accused without any coercion. Learned Magistrate before whom accused was produced passed an order on 29th March, 2016 recording facts of affidavit filed by first respondent and remanded accused to judicial custody. On the same day, petitioner accused was also directed to be released on bail.

7 Petitioner has annexed a copy of remand application, affidavit filed before remand Court and orders passed by learned Magistrate to the petition.

8 Learned counsel for first respondent has supported the prayer of petitioner and reiterated that there has been amicable settlement between the parties. An affidavit affirmed by complainant/respondent no.1 was tendered before this Court. In the said affidavit, it was stated that petitioner – accused have compensated him and due to intervention of relatives and well-wishers parties have arrived at an amicable settlement. It is

further stated that first informant has no objection for quashing the said FIR. The said affidavit is taken on record and marked “X” for identification. Learned APP has submitted report to Court. In the said report, it was stated that accused have returned the amount of complainant to him by pay order. It was also mentioned that there are no criminal antecedents against accused and they have no objection for quashing FIR which is registered with the said police station. The police report dated 25th July, 2016 is taken on record and marked “X-1” for identification.

9 We have heard submissions of both parties as stated above. We have taken into consideration the fact that the dispute was a loan transaction and amount has been refunded back to the complainant. Complainant has tendered an affidavit and has consented for quashing the FIR by way of amicable settlement. We have also perused affidavit filed before learned Magistrate while accused being produced for remand after his arrest and also the orders passed by the said Court. Police have also supported the case of petitioner as the parties have amicably settled the dispute. The dispute is of private nature. Reliance is placed upon the case of ***Gian Singh V/s. State of Punjab &***

Anr.¹ wherein the Apex Court has observed that in case of disputes which are of private nature, the High Court in exercise of its powers can quash FIR in criminal proceedings in the event of amicable settlement between the parties. We have taken into consideration all the circumstances emerged herein-above. We are, therefore, satisfied that this is a fit case to exercise the power of quashing and/or inherent powers under section 482 of the Code of Criminal Procedure. The impugned FIR therefore is quashed. However, taking into consideration that complainant has utilized police machinery and dispute was arising out of money transaction, we are imposing a costs of Rs.50,000/-.

10 Hence, We pass the following order:

:: ORDER ::

- (i) Rule is made absolute.
- (ii) The first information report registered with Samta Nagar Police Station vide No.17 of 2016 dated 7th January, 2016 for the offences punishable under Sections 406, 420 and 506-II

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of the Indian Penal Code is hereby quashed and set aside, subject to payment of costs of Rs.50,000/- (Rupees Fifty Thousand) to be paid by Petitioner to the Police Welfare Fund by 20th August, 2016;

- (iii) Payment of costs is a condition precedent for quashing the FIR. Order of quashing FIR would be operative after Petitioner deposits amount of costs and submits receipt of the same to the Registry of this Court;
- (iv) The In-charge Police Officer of Samta Nagar Police Station, Mumbai shall take cognizance of this order only if Petitioner produces an authenticated copy of this order along with a Photostat copy of receipt of payment of costs;
- (v) Parties to act upon an authenticated copy of this order.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)