IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO.406 OF 2016

Ariisto Shelters Pvt. Ltd. And Others. .. applicants
Vs
The State of Maharashtra and Another. .. Respondents
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Shri Ashish Singh i/b DSK Legal for the Applicants.
Mrs. M.H. Mhatre, APP for the Respondent No.1.
Shri Satyavrat Joshi along with Sonal More i/b Vidhii Partners for the Respondent No.2.
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CORAM : A.S. OKA & P.D. NAIK, JJ
DATED : 21ST APRIL 2016

P.C.

1. Heard learned counsel appearing for the Applicants, the learned APP for the first Respondent State and the learned counsel appearing for the second Respondent.

2. Rule. The learned APP waives service for the first Respondent State and the Advocate for the second Respondent waives service. Forthwith taken up for final disposal.

3. On the basis of the order made on 23rd December 2015 by the learned Additional Metropolitan Magistrate, 38th Court, Mumbai, under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), the impugned First Information Report was registered against the Applicants for the

offences punishable under Sections 406, 418 and 420 read with Section 34 of the Indian Penal Code. The present Application has been filed under Section 482 of the Cr.P.C. for quashing the FIR. There is an affidavit filed by Shri Hemant Kumar Garg, who is a Director and authorized representative of the second Respondent (Savlani Trading & Investment Company Pvt. Ltd.). In the said affidavit, it is pointed out that a Deed of Cancellation/Settlement dated 16th January 2016 has been executed by and between the Applicants and the second Respondent and, therefore, the second Respondent has no objection for quashing the FIR.

4. The learned counsel appearing for the second Respondent on instructions stated that the second Respondent will pay a donation of Rs.1 lakh to the Kirtikar Law Library.

5. We have perused the averments made in the complaint on the basis of which an order under Sub-section (3) of Section 156 of the Cr. P.C. was passed. The allegation is that the Applicants promised to provide Transferable Development Rights (TDR) at a concessional rate to the second Respondent and induced the second Respondent to pay a sum of Rs.1,99,13,400/- and induced the second Respondent to execute an agreement. It is alleged that notwithstanding the said promise, the Applicants did not provide TDR.

6. After having perused the complaint and the FIR, we are satisfied that the dispute was purely of a civil nature in relation to the commercial transaction of sale/transfer of the TDR.

7. Therefore, it appears to us that the dispute over commercial transaction led to a registration of the FIR. The offence alleged is purely of a private nature. Therefore, this is a fit case to exercise the power under Section 482 of the Cr. P.C. in the light of the law laid down by the Apex Court in the decision in the case of ***Gian Singh v. State Bank of Punjab***[1]**.**

8. Accordingly, we dispose of the Application by passing the following order.

ORDER :

(a) The Rule made absolute in terms of prayer clause (a) which reads thus:

> "(a) this Hon'ble Court be pleased to pass an Order allowing the present Application under Section 482 of the Criminal Procedure Code by quashing/setting aside the FIR bearing No.01 of 2016 date4d 05.01.2016 alongwith the order dated 23.12.2015 under Section 156(3) Cr.P.C. To the extent it relates to the Applicants."

1 (2012) 10 SCC 303

(b) We accept the statement made by the learned counsel appearing for the second Respondent on instructions that the second Respondent will pay a donation of Rs.1 lakh to the Kirtikar Library;

(c) The second Respondent shall file compliance affidavit by placing receipt on record within a period of five weeks from today;

(d) All concerned to act upon an authenticated copy of this order.

(P.D. NAIK, J) (A.S. OKA, J)