IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3451 OF 2015

1. Rajesh Vijaysinh Gujar,
R/o.Palghar,

2. Sanjay Dattaram Deolekar,
R/o.Dahisar (East), Mumbai,

3. Sanjay Maheshchandra Bhatia,
R/o.Mumbai.

4. Vinod Dattaram Padle,
R/o.Navi Mumbai,

5. Krishna Dattaram Parab,
R/o.Andheri (East), Mumbai,

6. Ganesh Govind Kadam,
R/o.Lower Parel, Mumbai. Petitioners

versus

1. Mrs.Amandeep Kaur,
R/o.Virar (West), Dist.Thane.

2. The State of Maharashtra Respondents

Mr.Nitin Sejpal for Petitioners.
Mr.Bhavesh M. Thakur for Respondent no.1.
Mrs.S.D.Shinde, APP, for Respondent no.2 State.

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

DATE : 1st August 2016

PC :

1. Rule. Rule made returnable forthwith. Mr.Bhavesh Thakur waives service for Respondent no.1 and Mrs.S.D.Shinde, APP, waives service for Respondent no.2-State.

2. The Petitioners are challenging the first information report (`FIR') registered with Arnala Police Station vide C.R.No.I-127/2015. The said FIR was registered at the instance of Respondent no.1 for offences punishable under Sections 406 and 420 of Indian Penal Code (`IPC').

3. The Petitioners and the Respondent no.1 have submitted that they have arrived at an amicable settlement and have approached this Court by invoking Article 226 of the Constitution of India seeking quashing of the impugned FIR with consent of both parties.

4. Brief facts which are necessary for adjudicating the prayers in this petition are as follows :

(a) The Petitioners are employees of Greater Bombay Co-operative Bank Limited (`the bank') having its office at Bhuleshwar, Mumbai. They are posted at the Stressed Accounts Department of the said bank at Bhuleshwar, Mumbai. They are entrusted with the responsibility of recovering the over-dues from the borrowers and guarantors and designated as Special Recovery Officers by the bank;

(b) The first informant has alleged that he was acquainted with one Santosh Shukla who represented the complainant that he had decided to avail of the personal loan from the bank. Mr.Shukla requested the first informant to give him, her personal guarantee to the said loan;

(c) The bank sanctioned a personal loan of rupees Two Lakh to Mr.Shukla after executing requisite documents. The loan amount was also disbursed to Mr.Shukla;

(d) Mr.Shukla failed to repay the aforesaid personal loan. The bank issued notices to him as well as to the guarantors including the first informant. However, the loan was not repaid. The bank filed an application before the Deputy Registrar of Co-operative Societies for issuance of recovery certificate under Section 101 of Maharashtra Co-operative Societies Act, 1960. On 29 September 2014, the Deputy Registrar, Co-operative Societies, issued recovery certificate to recover the outstanding dues of the aforesaid loan transaction;

(e) On 13 October 2014, the Petitioners issued a demand notice for Rs.2,07,467/-. The Petitioners also issued notice before attachment to the borrower and guarantor. The borrower handed over a letter along with a cheque of Rs.60,000/- towards repayment of the said loan and assured to repay the entire amount within stipulated time. However, he had requested not to deposit the cheque and assured that he would deposit cash in his account. He deposited Rs.29,000/-, however, failed to repay the remaining outstanding amount. All attempts to contact him turn futile. Thereafter, notice of attachment was issued to the borrower and the guarantors including the complainant;

(f) It is alleged in the FIR that on 26 March 2016, the accused visited the house of the complainant and informed her that they are initiating an action of attachment of house on account of complainant being the guarantor to the loan amount of Mr.Shukla. They also conducted panchanama, a copy of which was given to her. It is further alleged that one of the accused requested her to issue a security cheque or else her house will be sealed. Hence, the complainant issued a cheque. The complainant was informed that the cheque is taken only as a security and will not be deposited. However, thereafter the cheque was honoured and the amount was debited from the account of complainant. Hence, she lodged the FIR.

5. It is the case of the Petitioners that on 26 March 2015, they had visited the house of complainant for attachment proceedings as per notice. The complainant informed them that her flat has been mortgaged with another bank. She offered to repay an amount of Rs.1.60 lakh by cheque issued in favour of the said bank. She also promised that the cheque would be honoured. In view of this, the Petitioners made symbolic attachment of the said premises which was listed in the panchanama. Thereafter the cheque was presented and the same was duly honoured. However, thereafter the complainant has questioned the action initiated by the Petitioners and alleged that cheque was forcefully taken from her.

6. The Petitioners who are arraigned as accused in the said FIR and Respondent no.1 at whose instance the impugned FIR was lodged, have jointly submitted that they have amicably settled the dispute and wish to put an end to the criminal proceedings. The complainant tendered an affidavit before this Court in which it was stated that she was the guarantor in respect to the loan transaction which is subject matter of present proceedings. She further stated that she had handed over a cheque dated 26 March 2015 for Rs.1.60 lakhs and the same was presented by the bank for clearing on 28 March 2015 and the same was honoured. She further stated that the cheque amount was credited to the loan amount of Mr.Shukla. It is also mentioned that out of misunderstanding, she has lodged the complaint and has now amicably resolved the differences and dispute out of Court. It is also stated that now there are no disputes, differences and problem between the Petitioners and the complainant. She is no more interested in prosecuting the criminal complaint as she has no grievance against Petitioners. It is also stated that she unconditionally withdraws all allegations levelled by her against Petitioners in the aforesaid FIR. She has no objection to quash and set aside the impugned FIR lodged by her.

7. We have perused the contents of the petition, documents filed along with petition as well as affidavit tendered by the complainant. We have noticed that the parties have amicably settled the dispute and they want to put an end to the criminal proceedings initiated by the complainant. It is noticed that the FIR lodged on account of cheque being issued by the complainant, which according to her, was

issued at the instance of accused. It is admitted position that the complainant was a guarantor to the loan transaction. The Petitioners are the recovery officers appointed by the bank. They had followed the due process of law before initiating an action and recovery certificate was issued under Section 101 of Maharashtra Co-operative Societies Act, 1960 for recovery of subject loan. The cheque was signed by the complainant. In view of the aforesaid circumstances and also taking into consideration that the complainant has resolved her dispute with the Petitioners who are officers of the bank, we are inclined to entertain this petition and allow the prayers of the Petitioners. We have also perused the affidavit tendered by the complainant wherein she has consented for quashing the FIR. The dispute is of individual nature and the public at large has no concern. The Apex Court in the case of **Gian Singh Vs. State of Punjab and another**[1], has observed that High Court may exercise powers to quash criminal proceedings, in the event of settlement between the parties in relation to the disputes which are of private nature. In view of aforesaid factual aspects and law laid down by the Apex Court, we exercise our writ jurisdiction and power under Section 482 of Code of Criminal Procedure, 1973 and quash impugned FIR.

8. Hence, we pass following order :

(a) Rule is made absolute;

(b) We quash and set aside C.R. No.I-127/2015 registered at Arnala Police Station under Sections 406 and 420 of Indian Penal

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Code against Petitioners herein at the instance of Respondent no.1 herein;

(c) Parties to act on a copy of this order duly authenticated by registry of this Court.

(PRAKASH D. NAIK, J.) (NARESH H. PATIL, J.)

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