

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1175 OF 2016

Firoz Usman Tinwala and Another. .. Applicants
Vs
The State of Maharashtra and Another. .. Respondents
—
Shri Firoz Usman Tinwala, the Applicant No.1 in person.
Shri K.V. Saste, APP for the Respondent No.1.
Ms. Smita Kadu for the Respondent No.2.
--

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 17TH OCTOBER 2016

PC.

1. Rule. The learned APP waives service for the first Respondent. The learned counsel appearing for the second Respondent waives service. Forthwith taken up for final disposal.

2. The prayer in this Application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report registered at the instance of the second Respondent alleging commission of offences punishable under Sections 406, 420 read with 34 of the Indian Penal Code and Sections 3 to 5 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale,

Management and Transfer) Act, 1963. The allegation in short in the statement of the second Respondent on the basis of which the FIR was registered is that from time to time, various amounts were received by the Applicants from the second Respondent against the assurance given to sell a particular flat. It is alleged that the second Respondent paid a total sum of Rs.30 lakhs to the Applicants from the year 2011 to 17th January 2013. It is alleged that the flat agreed to be sold to the second Respondent was sold by the Applicants to a third party. The Applicants offered to pay a sum of Rs.55 lakhs to the second Respondent and issued seven cheques in that behalf. It is stated that the cheques were dishonoured.

3. The parties are relying upon the agreement dated 18th March 2016 and the consent terms which are filed in this Application. The consent terms have been signed by the second Applicant and the second Respondent as well as the Advocate for the second Respondent. The consent terms provide that the Applicants have agreed to pay a sum of Rs.30 lakhs to the second Respondent. A receipt dated 22nd September 2016 signed by one Shri Bhausahab Ghamre, the Uncle of the second Respondent acknowledging the receipt of the sum of Rs.30 lakhs is annexed to the Application. The learned counsel appearing for the second Respondent states that below the signature of his Uncle, the second Respondent has himself signed the said receipt. On instructions,

she confirms that the second Respondent has received the sum of Rs.30 lakhs from the Applicants.

4. In view of the consent terms, the second Respondent has filed an affidavit recording his no objection for quashing the criminal proceedings.

5. The real cause for registering the FIR was failure on the part of the Applicants to abide by the promise to sell a flat to the second Respondent. Now, there is a complete settlement in the said transaction. In view of the settlement, no purpose would be served by continuing the criminal proceedings. Therefore, in view of the law laid down by the Apex Court in the decision in the case of ***Gian Singh v. State Bank of Punjab***¹, this is a fit case to exercise the power under Section 482 of the Code of Criminal Procedure, 1973 for quashing the criminal proceedings.

6. Accordingly, we pass the following order:

ORDER :

(a) The Rule is made absolute in terms of prayer clause

(a) which reads thus:

¹ (2012) 10 SCC 303

“(a) This Hon'ble Court be pleased to quash the FIR bearing No.212 of 2016 of RAK Marg Police Station for offence under section 406, 420 and 34 of IPC and 3, 4, 5 of MOFA Act and the Petitioner No.1 who is in custody be released from the Taloja Central Prison.”

- (b) The parties to act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)