

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1254 OF 2016

Samraj Gold Export Pvt Ltd. and Others. .. Applicants
Vs.
The State of Maharashtra and Another. .. Respondents
—
Shri Kamran Shaikh for the Applicants.
Shri K.V. Saste, APP for the Respondent No.1 State.
Shri Sohail Ahmed for the Respondent No.2.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 24TH OCTOBER 2016

PC:

1. Heard the learned counsel appearing for the Applicants.
Rule. The learned APP waives service for the first Respondent. The Advocate 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 (for short “CrPC”) is for quashing the First Information Report (FIR) lodged at the instance of the second Respondent for the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code. The FIR was lodged by one Kalpesh Zaveri on behalf of the second Respondent who was working as Accounting and Sales Manager of the second Respondent. Reliance is placed on the consent terms which are annexed to the Application. In the consent terms, it is provided that the Applicants have agreed to return the entire amount of Rs.1,25,00,000/- to the second Respondent.

It is stated that in view of the settlement, the second Respondent has decided to give consent for quashing the FIR. There is an affidavit filed by Shri Kalpesh Zaveri, the authorized representative of the second Respondent recording no objection for quashing the FIR in view of the settlement.

3. Perusal of the FIR shows that the transaction between the Applicants and the second Respondent was purely a commercial transaction. Under the settlement, the Applicants have agreed to return the entire amount of Rs.1,25,00,000/- to the second Respondent.

4. The dispute as reflected from the FIR is purely a commercial dispute and, therefore, the law laid down by the Apex Court in the decision in the case of *Gian Singh v. State Bank of Punjab*¹ will apply. The offence alleged cannot be said to be against the Society at large. In a purely commercial dispute, the second Respondent has set the criminal law in motion. The police were required to carry out investigation. Therefore, the second Respondent agreed to pay a donation of Rs.3 lakhs to a Charitable Organization. Accordingly, the second Respondent has paid the donation to a Charitable Trust known as “Committed Communities Development Trust” by a cheque drawn on HDFC Bank. The said Trust is doing the work for the benefit of the children.

1 (2012) 10 SCC 303

5. Considering the settlement of the main dispute, this is a fit case to exercise power under Section 482 of the CrPC.

6. In the affidavit of the second Respondent, he has stated that he has no objection for defreezing the bank accounts of the Applicants with the Axis Bank and Bank of India.

7. Accordingly, we pass the following order.

ORDER :

(a) Rule is made absolute in terms of prayer clauses (a) and (b), which read thus;

“(a) This Hon'ble Court be pleased to quash the FIR bearing No.189 of 2016 of Gamdevi Police Station for offence under section 406, 420 and 34 of IPC and the Applicant No.3 who is in custody be released from Jail;

(b) This Hon'ble Court be pleased to direct the Respondent No.1 to defreeze the Account bearing No.915030030786718 of Applicant with Bank of India, Bullion Exchange Branch Mumbai.”

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

(A.A. SAYED, J)

(A.S. OKA, J)