

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.637 OF 2017

Smt. Anita Maria Dias & Anr. Petitioners
Vs.
The State of Maharashtra & Anr. Respondents

Mr. Vishwabhusan Kamble i/by Jayakar & Partners
for the Petitioners.

Ms M.H. Mhatre, APP, for the Respondent-State.

Mr. Nilanjan Nachankar i/by Mr. Aashish Satpute
for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : APRIL 07, 2017

P.C:

1. By this criminal writ petition, the petitioners are seeking to quash C.R. No.267 of 2012, registered by Chaturshrungi Police Station, Pune, alleging offences punishable under Sections 420, 406, 467, 471 and 34 of the Indian Penal Code.

2. The complainant is the second respondent. On the

earlier occasion when this matter was placed before the Division Bench of this Court, it was informed that the parties have settled the matter amicably.

3. Reliance was also placed upon an affidavit in reply filed by the complainant.

4. The affidavit reads as under:-

"I, Mr. Manoj Yeole, Indian Inhabitant, R/Ae 2/2 gera Emeralled City Near Pancard Club, Baner, Pune, the Respondent no.2 abovenamed do hereby state on solemn affirmation as under:

- 1. I am the original complainant in CR No.267 of 2012 dated August 2, 2012 filed against all petitioners under sections 420, 406, 467, 471 and 34 of Indian Penal Code, 1860.*
- 2. Due to mediation and intervention of well wishers, I have no objection to the quashing of the FIR no.267/2012 against Petitioners only i.e. Mr. Levino Dias and Anita Maria Dias. I say that the misunderstandings have been cleared and I wish to put a closure to all litigations initiated intersey between me and the petitioners i.e. Mr. Levino Dias and Anita Dias and also undertake to unconditionally withdraw the 138 complaint (being CC No.19227/2012) filed by me against the petitioners in Pune JMFC Court on quashing of FIR qua the petitioner only.*

3. *This present Affidavit shall not be considered as NO Objection for quashing of FIR Qua Other Accused Persons in CR No.267 of 2012 registered with chaturshrungi Police station_Pune*

4. *I say that I undertake not to initiate any further and other litigations against the present petitioners in respect of the transactions arising out of the same FIR.”*

5. The complainant is present in Court. When questioned by us upon the contents of this affidavit, whether he has understood the same with all the legal implications and consequences, the complainant was not coherent. He did not give answers consistent with his statements but projected before us his grievance that since nothing has been achieved by him by launching this criminal prosecution, he does not wish to press the allegations therein.

6. We at once clarified that, it is not the perception of this complainant or of the accused which would enable us to exercise our inherent powers. We have our independent satisfaction which we must record. We cannot abdicate our duty as a Court exercising inherent jurisdiction under Section 482 of

Code of Criminal Procedure, 1973 and Article 226 of the Constitution of India and leave everything to the version of both sides.

7. We called upon the petitioners' Advocate to satisfy us as to why this criminal prosecution should be quashed and quash these petitioners/accused. More so, when the petitioners are only chosen accused by the complainant now for giving up the criminal prosecution.

8. The statement which is made by the complainant/respondent No.2, present in this Court, is that he is familiar and knows one Vilas Birajdar. That Vilas Birajdar and the complainant were meeting each other. The said Birajdar is stated to have persuaded him to invest huge sums in a certain company called M/s. Carl Logistics, that is a Goa based company. Its two main partners are one Levino Dias and Smt. Anita Dias. They are brother and sister. That is how the complainant accompanied the said Birajdar. After reaching Goa, there was a meeting held and certain assurances and promises

were given to the complainant. There was a written Memorandum of Understanding drawn up. Thereafter, it is stated that these accused have routed certain money through Birajdar and his account. The monies are supposed to have been paid to Birajdar. The said Birajdar has not been returning the monies, according to the complainant, though he has stated to have received them. Further, that is also not the entire sum. The complainant has specifically stated in his statement that there are certain cheques issued even by Levino and Anita. However, those cheques, on presentation, were dishonoured. Thus, from inception and which is a *prima facie* version, the complainant was lured into parting with huge sums and on an assurance that the investment will be fruitful, advantageous and profitable. The fact is that monies were pocketed by these accused and in collusion with each other. This is how these allegations have been made and including of using the sum by them. Though the brother and sister are two partners, the allegation is, curiously, certain signature of another lady partner (Anita's sister) was taken as a witness. Thus, all of them have connived and together

cheated the complainant is the version which can be gathered from the reading of the statement as a whole. Further, there are other allegations and serious enough charging these parties with forgery.

9. It is in these circumstances that we are unable to accept the petitioners' argument that the proceedings are abuse of process of the Court, particularly after the settlement. The entire foundation of this petition was that the complainant set the criminal law in motion due to some misunderstanding, later on there was a mediation and settlement, hence we should quash the FIR. We do not think that grounds (a) to (e) appearing at pages 6 and 7 in para 7 of the petition are enough to exercise our inherent jurisdiction. The complainant cannot pick and choose an accused and as per his convenience. Secondly, the version of the complainant before us is not consistent with his affidavit tendered in the Court. We do not think that this is an offence and registered only because of some private disputes or misunderstanding on account of investment of certain funds and monies. The larger interest of the society is

adversely affected by such *prima facie* dubious and doubtful dealings.

10. As a result of the above discussion, the writ petition fails and it is dismissed.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)