

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 634 OF 2016

Ashish Madanlal Jain ..Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Umesh Mankapure for the Applicant

Mr. K.V.Saste APP for the Respondent No.1.

Mr.Kapil Dave a/w. Mr. Amar Datta i/b. Lex Services for the
Respondent No.2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 9TH FEBRUARY, 2017**

P.C.

1. Heard the learned Counsel appearing for the applicant. 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 with Tasgaon Police Station for offences punishable under Section 419, 420, 406, 471, 504, 503 of the Indian Penal Code. In paragraph 4 of the application, the applicant has come out with the following case:

“4. The Applicant states and submits that, false allegations have been made without disclosing the true facts that there was settlement between the Complainant and the Applicant and the Applicant has paid an amount of Rs.81,00,000/- as full and final settlement as July 2014. Nothing was remained to be paid to the complainant after the settlement.”

2. In support of the said averment, the applicant has relied upon a photocopy of the settlement, annexed at page 25 of this application. Page 25 appears to be a photocopy of an alleged the photocopy of the original attested by a Notary Public on 18th February, 2016.

3. In response to the legal notice issued by the second respondent to the applicant, he has come out with the case of settlement in paragraph 4 of the reply which reads thus:

“ That in reply to para no.4 of the legal notice it is submitted that your client has approached to Kiryana Committee, Delhi (Regd.) and after going through the facts the President of the said Committee, Sh. Suresh Chandra Mittal and Sh. Ashok Tulsian have settled the

matter finally as full and final settlement as there was some dues upon your client towards my client in respect of said transaction. The said mutual agreement was duly signed by your client and my client without any kind of pressure, force, fear and coercion in the presence of witness Sh. Ramesh Chand and Sh. Subhash Aggarwal. It is further submitted that in pursuance of the Mutual Agreement dated 23.07.2014 my client had paid the settled amount to your client which was specifically admitted by your client in your notice under reply. It is further submitted that now your client has become greedy that is why he is adopting such types of practice by sending the false and frivolous notice to my client to extort money from my client”.

4. As there was a serious dispute raised by the learned Counsel appearing for the second respondent as regards the genuineness of the document on page 25, on the last date, we had called upon the applicant to produce the original of the document on page 25. Today, for the first time, the learned Counsel appearing for the applicant has come out with the case that the original of the said document is with the Kirana Committee, Delhi. He has submitted

that due to the ongoing litigation in the form of a suit pending in the Court of Samar Vishal- Civil Judge-10 (Central)/Delhi, the Kirana Committee is not willing to part with the original. On instructions, he states that a sum of Rs. 81 Lakhs was deposited by the applicant with the said Kirana Committee and the second respondent has taken the said amount from the said Committee.

5. In the present application, there is no assertion that the original of the document on page 25 is with the said Kirana Committee. Secondly, today it is contended that the certified copy of the original was given to the applicant by the Kirana Committee. However, page 25 shows that the same is not certified by the Kirana Committee. As stated earlier, it is a photocopy of the attested photocopy signed by a Notary Public.

6. In the reply dated 3rd November, 2014 issued by the Advocate for the applicant to the advocate for the second respondent. It is stated that as per the agreement dated 23rd July, 2014, the applicant has paid the settlement amount to the second respondent. Paragraph 4 of the said Advocates' letter is already quoted above. The amount paid by the applicant is not mentioned in the said paragraph 4.

7. The entire petition is founded on the alleged settlement, a copy of which is annexed at page 25. Now, only by way of an afterthought, a case is sought to be made out that the applicant is not in possession of the original. That is not the case pleaded in the application.

8. As the entire application is founded on the said settlement, in absence of the original, it is not possible for us to exercise jurisdiction under Section 482 of the Code of Criminal procedure, 1973 which is required to be used sparingly especially when the second Respondent is not supporting the applicant.

9. If according to the case of the applicant, the original was never in his possession, the said fact ought to have been stated in the present application.

10. Hence, we decline to entertain this application under Section 482 of the Code of Criminal Procedure. Accordingly, the case is rejected. We, however, make it clear that no adjudication is made on the merits of the controversy.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)