

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 825 OF 2016

Kubix Realities Pvt. Ltd. and Another. .. Applicants
Vs.
State of Maharashtra and Another. .. Respondents

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Shri Subhash Jha and Ms. Sanjana Pardeshi i/b Law Global for the Applicants.
Shri K.V. Saste, APP for the Respondent No.1.
Shri Ghanshyam Upadhyay and Shri Kamlesh Tiwari i/b Law Juris for the Respondent No.2.
Ms.Priyanka Yerawar for the Respondent Nos.3 and 4.
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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 9TH MARCH 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. Rule. The learned APP waives service for the first Respondent and the Advocate for the second Respondent waives service. The Advocate for the third and fourth Respondents waives service. Forthwith taken up for final disposal.

2. The prayer in this Application is for quashing First Information Report (FIR) and the chargesheet filed on the basis thereof. The second Respondent is the first informant. Though in the Application as filed, the prayer is for quashing the FIR on merits, now the

Applicants are seeking quashing on the basis of the settlement. The offence alleged is registered under Section 420 read with Section 34 of the Indian Penal Code. The allegation in the FIR is that the Applicants were repeatedly representing that they are going to construct a housing complex. It is alleged that a sum of Rs.16,93,629/- was accepted by the Applicants by cheques and pay orders, but the flats were not allotted as agreed. The statement of the second Respondent on the basis of which FIR was registered shows that that the said amount of Rs.16,93,629/- was accepted by the Applicants from the second Respondent and 13 others.

3. The settlement pleaded is that the Applicants have paid the requisite amounts to the second Respondent as well as 13 other victims of the offence. It is stated that the amounts due and payable to the victims of the offence together with interest have been paid to all the victims of the offence.

4. We have perused the report dated 16th February 2017 submitted to the Court by the Senior Inspector of Police of Mulund Police Station. The report records that out of 14 victims, 12 have received the requisite amounts from the Applicants. However, two victims of the offence viz. Smt.Bharati Ahire and Shri Dilip Gawali received the cheques but they have not encashed the said cheques. The

12 victims of the offence including the second Respondent have filed the affidavits in this Court recording receipt of the specific amounts from the Applicants. The affidavits have been verified by the Investigating Officer and he has found that the affidavits have been executed by the victims who have received the amounts as stated in the affidavits.

5. Now, there are affidavits filed by Shri Dilip Kitkul Gawli dated 17th February 2017 and Smt. Bharati Dilipkumar Ahire dated 17th February 2017 in which they have set out the amounts received by them towards the principal and interest. The learned APP on instructions of the Investigating Officer states that both Shri Dilip Gawli and Smt. Bharati Ahire were contacted by him on their cell phone numbers and both of them have accepted that they have received the amounts as specified in the affidavits.

6. We have perused the affidavits filed on record. As stated earlier, the affidavits record that the victims of the offence have received the amount paid by them together with interest thereon. In view of the receipt of the amounts, they have recorded their no objection for quashing the proceedings as well as for permitting the Applicants to withdraw the sum of Rs.20 lakhs which has been deposited by them in the Court of the learned Additional Chief Metropolitan Magistrate, 27th

Court, Mulund, Mumbai, on the basis of the order dated 8th August 2013 passed by the Sessions Court, Mumbai in Anticipatory Bail Application No.1143 of 2013.

7. We have perused the statement of the second Respondent on the basis of which FIR is registered. The dispute reflected from the statement has predominantly a civil flavour. The allegation is that notwithstanding the receipt of booking amounts from the second Respondent and other victims of the offence, the flats were not allotted to them. Now, in view of the settlement, all the 14 victims of the offence have received the amounts from the Applicants with interest thereon as agreed. The offence alleged cannot be said to be an offence against the society at large or of a heinous nature. Therefore, in view of the principles laid down by the Apex Court in the decision in the case of ***Gian Singh v. State Bank of Punjab***¹, we find that this is a fit case to exercise the powers under Section 482 of the CrPC.

8. Accordingly, we pass the following order:

ORDER :

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

(a), which reads thus:

“(a) that this Hon'ble Court may be pleased to call for the investigation papers concerning FIR No.225/13 of Mulund Police Station, Mumbai

¹ (2012) 10 SCC 303

and after examining the legality, validity and/or propriety of the same, may be pleased quash and set aside the same and consequently the charge sheet filed by Mulund Police Station in the form of C.C. No.118/PW/14 in the Court of Ld. Metropolitan Magistrate's 27th Court at Mulund, Mumbai may also be quashed.”

- (b) The learned Additional Chief Metropolitan Magistrate, 27th Court, Mulund, Mumbai, shall permit the Applicants to withdraw the sum of Rs.20 lakhs deposited with the said Court in terms of the order dated 8th August 2013 passed by the Sessions Court in Anticipatory Bail Application No.1143 of 2013. If the said amount is invested in the Fixed Deposit, even the interest accrued thereon shall be permitted to be withdrawn by the Applicants;
- (c) All concerned to act upon an authenticated copy of this order.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)