

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

WRIT PETITION NO. 3740 OF 2016

Manoj Khimji Katira & Ors.

..Petitioners

v/s.

Vikram Muljibhai Katira & Anr.

..Respondents

Mr. Jitendra Pathade for the Petitioner.

Ms.Shraddha Pawar I/b. Ms.Ujwalla Sawant for the Respondent No.1.

Mrs. S.V.Sonawane, APP for the Respondent No.2.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.

DATED : 18TH JANUARY, 2017

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

1. Rule. The learned Counsel for the respondent no.1 waives service. The learned APP waives service for the second respondent. Forthwith taken up for final disposal.

2. The prayer made in this petition under Article 226 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information

Report No.81 of 2013 registered at Nehru Nagar Police Station, Mumbai, and C.C.No. 145/PW/2015 pending before the Court of the Metropolitan Magistrate's 34th Court, Vikhroli, Mumbai. The first respondent is the first informant.

3. The dispute concerns membership of a Co-operative Housing Society. The allegation of the first respondent is that the original share certificate No.4 was issued in the name of one Khimji Katira. The allegation is that the original share certificate was in the custody of the first respondent. However, a duplicate certificate was prepared by the accused and was transferred in the name of the first petitioner. It is alleged that a letter was prepared in the name of late Khimji katira by forging his signature.

4. The second to fourth petitioners are the office bearers of a Cooperative society. Some other office bearers were also shown as the accused.

5. The first respondent has filed an affidavit dated 26th October,

2016 which is affirmed before the Assistant Registrar of this Court. To the said affidavit, the original Memorandum of Understanding/Settlement dated 6th October, 2016 executed by and between the first petitioner and the first respondent has been annexed. Perusal of paragraphs (3) and (4) of the said document shows that there is a complete settlement between them as regards the issue of membership of the said society. These clauses provide for the settlement of the pending litigations between them, including the first information report in criminal case, subject matter of this petition. Clause (6) also provides that the first respondent has agreed to give consent for quashing of the subject First Information Report, not only as against the first petitioner, but also against the other accused.

6. A perusal of the statement of the first respondent, on the basis of which the first information report was registered shows that the dispute is essentially regarding the succession to the membership of the Co-operative Housing Society. Now that issue has been completely resolved, as evidenced by the Deed of Settlement. It is

this dispute which led to the registration of the First Information Report. Considering the nature of allegations in the first information report, it cannot be said that the said offence is either of heinous nature or against the society at large. It is purely a dispute between the individuals.

7. No purpose will be served by continuing the criminal proceeding after overall settlement of the dispute between the first petitioner and the first respondent. The chances of conviction are very bleak.

8. Therefore, in our view, this is a fit case to exercise powers under Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceeding. Accordingly, we pass the following order:

i) Rule is made absolute in terms of prayer clause (a) which reads thus:-

“This Honourable Court be pleased to quash and set aside the First Information Report bearing No.81 of 2013 lodged at Nehru Nagar Police Station, Mumbai for

offences punishable under Section 420, 464, 465, 467, 468, 471, 120(B) of the Indian Penal Code, 1860 hereto annexed as Exhibit A and the CC No.145/PW/2015 pending before the learned Metropolitan Magistrate's 34th Court, Vikroli, Mumbai.”

ii) We make it clear that the proceeding stands quashed as against all the accused.

. All concerned to act on the authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)