

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.131 OF 2018.

Ajju C.S. Sindolli.
52 years, Businessman
presently r/o House No.
524/4, Danva Road, Thivim
Bardez Goa.

... Petitioner

Versus

1. State of Goa,
Through the Public Prosecutor,
High Court, Panaji, Goa.

2. The Police Inspector,
Economic Offences Cell,
Panaji, Goa.

3. Atmaram Mukund Joshi,
R/o Near Lairae Temple,
Bicholim, Goa 403 503.

.... Respondents

Mr. Vibhav Rajiv Amonkar, Advocate for the Petitioners.

Mr. S.R.Rivankar, Public Prosecutor for the Respondent nos.1 and 2.

Mr.S.Redkar, Advocate for Respondent no.3.

***Coram : Shantanu S.Kemkar &
N.M. Jamdar, JJ.***

Date : 6 AUGUST 2018.

Judgment (Per Shantanu S.Kemkar, J.). :

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. By filing this Petition under Section 482 of the Code of Criminal, the Petitioner is seeking quashment of F.I.R. No.110/2018 registered on 31 May 2018 at Police Station (Economic Offences Cell), Panaji Goa.

3. Briefly stated, on 1 May 2018 the Petitioner had allegedly requested the third Respondent to give his four fixed deposit receipts all amounting to Rs.3,00,000/- with a promise of making it double. It is stated that the third Respondent trustfully gave the said fixed deposit receipts to the Petitioner, which the Petitioner encashed and withdrew the amount of Rs.3,00,000/- but did not return the amount to the third Respondent. In the circumstances, the third Respondent filed a complaint on 14 May 2018 with the Police and pursuant to which an F.I.R. No.110/2018 dated 31 May 2018 was registered against the Petitioner for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

4. It is the case of the Petitioner that now the Petitioner and

the third Respondent have amicably settled the dispute and differences, which had arisen on account of the alleged incident. In view of the compromise/settlement between the parties, the Petitioner has filed this petition for quashment of the said F.I.R.

5. The third Respondent has filed reply and has not disputed that the matter has been settled. It is stated that he has no grievance against the Petitioner. It has been specifically stated that the Petitioner has returned the amount of Rs.3,00,000/- to him and, therefore, he is not desirous to continue the said criminal proceeding against the Petitioner.

6. It is the case of the Petitioner as also of the third Respondent-Complainant that continuation of the criminal proceeding is unwarranted, in view of the settlement between the Petitioner and the third Respondent. It is stated by both the sides that the dispute was commercial in nature and hence, there is no substance in prosecuting the complaint as the third Respondent has received the amount back.

7. In support of the prayer made in the petition, the learned counsel for the Petitioner has placed reliance on a judgment delivered by the Supreme Court in the case of *Parbatbhai Aahir Alias Parbatbhai*

*Bhimsinhbhai Karmur and others Vs. State of Gujarat and another*¹

In paragraphs 16.6 16.7, 16.8. and 16.9., of the said judgment, the Supreme Court has held as under:-

“16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8 Criminal cases involving offences which arise from commercial, financial,

¹ (2017)9 SCC641

mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9 In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.”

8. Having considered the submissions made by the learned counsel for the Petitioner and having gone through the Petition and the reply, we are of the view that this is a fit case for exercising the jurisdiction under Section 482 of the Code of Criminal Procedure.

9. From the nature of the offence it is clear that the same is neither heinous nor serious offence involving mental depravity or are offences, which are covered in paragraph 16.6 of the judgment passed by the Supreme Court in the case of *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another* (supra). On the contrary, the offences are squarely covered under Paragraph 16.7, 16.8 and 16.9 of the said judgment of the Supreme Court, as we find that the offences which are involved in this petition, arise from commercial transaction with an essentially

civil flavour.

10. In the circumstances, we are of the opinion that in view of the compromise entered into between the parties and the fact that the possibility of conviction is remote, the continuation of the criminal proceeding would cause oppression and prejudice and as such it is a fit case for quashing of the F.I.R.

11. Having held so, we allow the petition. The impugned F.I.R., is quashed. Rule is made absolute.

N.M. Jamdar, J.

Shantanu S.Kemkar, J.