

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2742 OF 2018

Haresh Sankalchand Hirani and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

WITH

CRIMINAL APPLICATION NO. 492 OF 2018

Ashok Devichand Shah. ..Petitioner.

Versus

State of Maharashtra & Another. ..Respondents.

Advocates in WP No. 2742 of 2018 :

Mr. Shekhar Ingawale for the Petitioner.

Mr. S. R. Shinde, APP for the Respondent-State.

Mr. Nimay Dave I/b Smita Sawant for Respondent No.2

Advocates in APL No. 492 of 2018 :

Mr. Rajesh G. Singh I/b Manoj Mhatre for the Applicant.

Mr. K. V. Saste, APP for the Respondent-State.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 26, 2018.**

P. C. :

1. The Petitioners in WP No. 2742 of 2018 are arraigned as accused Nos. 2, 3 and 4 whereas the Applicant in APL No. 492 of 2018 is arraigned as accused No.1 in FIR bearing CR No.697 of 2017 registered with Samtanagar Police Station, Kandivali, Mumbai. The said FIR is registered at the instance of Amit Jain – Respondent No. 2 in

WP No. 2742 of 2018 for the offence punishable under sections 406 and 420 read with 34 of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that pending investigation in the above FIR, the Petitioners in Writ Petition 2742 of 2018 (i.e., the accused persons) and the complainant - Amit Jain have amicably settled their disputes and entered into consent terms, which read thus :

1. The parties to the present Consent Terms are the Directors of M/s. Shamik Enterprises Private Limited (**'Shamik'**), M/s. Shamik Enterprises Private Limited and Amit Mangilal Jain (**'Amit Jain'**), Respondent No. 2 herein.
2. Shamik and Amit Jain through his Sole Proprietorship concern M/s. Arkade Creations (**'Arkade'**) had entered into a Memorandum of Agreed Terms dated 16th October 2014 (**'MOAT'**). Certain claims, disputes and misunderstandings arose between the parties, as a result of which the following proceedings have come to be instituted:
 - (i) FIR dated 2 December 2017 being C.R. No. 697/2017 registered with the Samtanagar Police Station (**"FIR"**), by Amit Jain against the Directors of Shamik i.e. the Petitioners herein, against which the captioned Criminal Writ Petition No. 2742 of 2018 has been filed for quashing;
 - (ii) Anticipatory Bail Application No. 1344 of 2017 and 1349 of 2017 upon which an order came to be passed, which order was challenged by Amit Jain in Criminal Application No.73 of 2018;
 - (iii) Arbitration Petition (L) No. 206 of 2018 and Arbitration Application No. 150 of 2018 and arbitration proceedings before the learned Arbitrator Mr. Akash Rebello.
3. By the intervention and conciliation of friends and mutually trusted persons, the aforesaid misunderstandings, claims and disputes between the parties have been resolved on the terms more particularly set out hereafter.
4. The parties to the present Consent Terms agree and confirm that the FIR being C.R. No. 697/2017 was filed by Respondent No. 2 on account of certain misunderstandings between Respondent No. 2, Shamik and its directors i.e. the Petitioners herein as to the interpretation of certain terms of the MOAT. Amit Jain is not desirous of pressing the statements made in the FIR and has no objection to the same being quashed subject to compliance with the terms set

out herein.

5. Simultaneously with the execution of the present Consent Terms before this Hon'ble Court, Shamik has paid to Amit Jain a sum of Rs. 1,96,58,240/- (Rupees One Crore Ninety Six Lakh Fifty Eight Thousand Two Hundred and Forty only) vide two demand drafts bearing Nos. 128284 and 128285 for the sum of INR 1,76,58,240/- (Rupees One Crore Seventy Six Lakh Fifty Eight Thousand Two Hundred Forty Only) and Rs. 20,00,000 /- (Rupees Twenty Lakh only) respectively. This payment is made by Shamik and accepted by Amit Jain for himself and his proprietorship concern Arkade in full and final settlement of all disputes of any nature whatsoever pending between the parties hereto, including specifically the disputes forming the subject matter of the proceedings set out in clause 2 above.
6. Amit Jain has filed an Affidavit in the captioned Petition recording that he has no objection, and consents, to the grant of the reliefs prayed for by the Petitioners in the captioned Petition.
7. Amit Jain agrees and undertakes that he shall forthwith, and no later than within seven days from the execution of these Consent Terms withdraw Criminal Application No. 73 of 2018, filed by him in this Hon'ble Court challenging the anticipatory bail granted to the Petitioners by the Hon'ble Sessions Court at Dindoshi in Anticipatory Bail Application Nos. 1344 of 2017 and 1349 of 2017.
8. Subject to this Hon'ble Court quashing the FIR and upon payment to Amit Jain by Shamik as above, the parties agree, confirm and undertake that forthwith upon execution of the Consent Terms, their respective claims before the Arbitrator stand extinguished and all ad-interim / interim orders passed in the above matters, stand vacated. The parties agree and undertake that for formality's sake they shall forthwith, and no later than within seven days from the execution of the present Consent Terms, request the learned Arbitrator to dispose of the reference by passing an Award in terms of the present Consent Terms and to forthwith vacate all interim orders passed therein. It is agreed and undertaken by the parties that they shall appear before the Arbitral Tribunal and/or this Hon'ble Court either themselves or through their Advocates, as may be required for the purpose of causing to be disposed of any proceedings and/or vacating any ad-interim / interim orders.
9. Without prejudice to the above, it is agreed and confirmed by the parties that it shall be open to either side to give 48 hours' written notice to the advocates for the other side and to thereafter apply unilaterally for the disposal of the proceedings as also for vacation of ad-interim / interim orders passed by the Arbitrator or any other Court or Forum, without the concerned Court / Forum / Arbitrator being required to insist upon the presence of the other party.
10. Subject to this Hon'ble Court quashing the FIR and upon payment to Amit Jain by Shamik as above, the parties agree, confirm and undertake that upon execution of these Consent Terms they hereby withdraw all claims, and have no claims, against one another of any nature whatsoever, civil or criminal, under the MOAT or otherwise, and shall not make any such claims in future, including but not limited to alleging breach or contempt of any order. The parties agree and confirm that save and except as stated in clause 2 hereinabove, there are no

proceedings pending against one another. The parties agree and undertake that should any proceedings between them be subsequently discovered, the party having filed the said proceeding shall forthwith withdraw the same upon written notice by the other party. It is confirmed that the MOAT shall be treated as mutually terminated by the parties hereto.

11. All the parties confirm and undertake to this Hon'ble Court that they have executed these Consent Terms of their own free will and have understood the meaning and purport thereof.
12. It is agreed, confirmed and undertaken by the parties that the terms of the settlement shall remain confidential save and except to the extent that the parties shall be permitted to inform the world at large that all proceedings, disputes and allegations between them stand withdrawn / settled, without disclosing the terms of the settlement. This would not preclude any party from disclosing the terms of the Consent Terms to any statutory or legal authority as may be required in law and/or professional advisors."

3. The consent terms are signed by the Petitioners in WP No. 2742 of 2018 as well as by said Amit Jain and by their respective advocates on record. The Petitioners and said Amit Jain are present in the Court. On query, they submitted that they have minutely gone through the consent terms and understood the same and will abide by the same. In the light of statements, consent terms are taken on record and marked "X" for identification. Undertakings given in the consent terms are accepted.

4. In terms of the understanding arrived at between the parties, they are seeking quashment of the subject FIR by consent.

5. Accordingly, complainant – Amit Jain has filed affidavit wherein he has re-iterated whatever is stated hereinabove. In

paragraph 4, Amit Jain has requested to quash the subject FIR against the Petitioners and the Applicant above-named.

6. Mr. Amit Jain – complainant [Respondent No.2 in WP No. 2742 of 2018] is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the subject FIR lodged at his instance against the Applicant and the Petitioners. Mr. Amit Jain also acknowledged that he has received an amount of Rs.1,96,58,240/- by demand draft.

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts

which are already overburdened.

8. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject FIR. Accordingly, Writ Petition No. 2742 of 2018 is allowed in terms of prayer clause (a) and APL No. 492 of 2018 is allowed in terms of prayer clause (b). In the facts and circumstances of the case, we find it would be appropriate to saddle the Applicant and the Petitioners with the cost of Rs.10,000/- each, which shall be paid to **“Yashodhan Charitable Trust”, Satara** [having Registration No. 1895/Satara, Maharashtra], an institution that takes care of the mentally retarded and elderly people in the downtrodden society. For the quashment to take effect, the Applicant and the Petitioners shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition and application shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*. [Yashodhan Charitable Trust Account No.: 60245873355, IFSC Code : MAHB0000305].

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]