

Vidya Amin.

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

WRIT PETITION NO. 3128 OF 2018

Hiren Ashwin Shah & Ors. ... Petitioners
VS.
Uma Sriram Iyer & Ors. ... Respondents

Mr. Vishwajeet Mohite a/w. Mr. Vishal Kumar S. Kothari, Advocate for the petitioners.

Mr. Abhijit Singh i/b. Mr. Niyaz Khan, Advocate for respondent nos. 1 to 3.

Mr. V.B. Konde-Deshmukh, APP for the State.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: AUGUST 31, 2018**

P.C. :

1. Rule. Rule made returnable.
2. This Writ Petition is filed with substantive prayer:

“a) This Hon'ble Court be pleased to call for the Case Diary and proceedings of the FIR being CR No, I-04/2017 registered with the Goregaon (W) Police Station, Mumbai and on perusal thereof be pleased to quash the said FIR with consent of the respondents in the light of Exhibit C and D.”
3. At the outset, the learned counsel appearing for the

petitioners, on instructions, makes a statement that the petitioners are ready to deposit Rs.20,000/- to the Police Welfare Fund. He submitted that the said amount will be deposited in Axis Bank Account No. 465010100008693.

4. Pursuant to the notices issued to the respondents, respondent nos. 1 to 3 have filed affidavit of consent. The same is taken on record. The parties are identified by the learned counsel appearing for the respective parties.

5. Paragraphs 5 to 7 of the said affidavit reads as under:

5) We say that since the petitioners failed to repay the balance amount of Rs.92,00,000/- (Rupees Ninety two lakhs only), we had filed a civil suit before the Hon'ble City Civil Court, Dindoshi, Mumbai vide Suit No. 1871/2015 thereby seeking prayers of injunction and other reliefs, more particularly mentioned therein. We also moved Chamber Summons in the said suit for impleading DHFL as a party defendant to the said suit. I say that the said suit is pending before Hon'ble City Civil Court, Dindoshi, Mumbai.

6) We say that since the petitioners did not refund the balance amount of Rs.92,00,000/- (Rupees Ninety-two lakhs only), we filed a complaint with Goregaon (W) Police Station to that effect and accordingly a First Information Report being CR No. 04 of 2017 came to be registered with the respondent no. 4, i.e., Goregaon (W) Police Station, Mumbai u/s. 420, 34 of Indian Penal Code, 1860 (hereinafter referred to as "said criminal case") against the petitioners herein.

7) We say that during the pendency of the said criminal case, the petitioners have returned the entire balance amount of Rs.92,00,000/- (Rupees Ninety-two lakhs only) in favour of the petitioner no. 3 Company in discharge of all the claims pending amongst the parties, and in view thereof, we have settled all our disputes inter se. We say that we have also executed an Affidavit-cum-undertaking dated 26th April, 2017 thereby admitting and acknowledging the receipt of the disputed amount of Rs.92,00,000/- (Rupees Ninety-two lakhs only) and our readiness

and willingness to withdraw all civil as well as criminal cases against the petitioners, a copy whereof is annexed at Exhibit C of the petition. We say that the contents of the said affidavit-cum-undertaking dated 26/04/2017 are true and the said document annexed at Exhibit-C of the Petition bears signatures of myself as well as respondent no. 2.”

6. Upon conjoint reading of aforesaid paragraphs, it is abundantly clear that the parties have settled the dispute and in terms of settlement, the petitioners have returned the entire balance amount of Rs.92,00,000/- in favour of petitioner no. 3 in discharge of all the claims pending amongst the parties. In that view of the matter and keeping in view the allegations in the First Information Report and to secure the ends of justice and to prevent abuse of process of law, the Writ Petition deserves to be allowed accordingly.

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

8. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)