

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL WRIT PETITION NO.3288 OF 2012**

**Parinda Siraj Zilla & Ors**

**..Petitioners**

**Vs.**

**The State of Maharashtra & Ors**

**..Respondents**

**Mr. Prasad Borkar for the Petitioners**

**Mr. R. Satyanarayanan Iyer i/b Mr. Sagar Beloskar for the Respondent  
No.2 & 3**

**Mrs. P. P. Shinde APP for the Respondent State**

**API Mr. C. B. Gaikwad, GC-II Unit, EOW, Mumbai present**

**CORAM :R. M. SAVANT, &  
REVATI MOHITE DERE,JJ  
DATE : 6<sup>th</sup> JUNE, 2018**

**P.C.**

1           The above Petition came to be admitted by a Division Bench of this Court on 8-10-2012 that is how the above Petition has been listed for final hearing. The above Petition was adjourned on the last date so as to enable the Learned APP to take instructions in the matter, as at the time when the above Petition was admitted the investigation was in progress. In view of the restraint order passed by the Division Bench though the investigation has been completed the charge sheet could not be filed.

2           The above Petition seeks quashing and setting aside of the FIR being C. R. No.54 of 2012 which was lodged by the Respondent No.2 against the Petitioners for the offences punishable under Sections 420, 465, 467, 468, 471, 120B and 34 of the IPC. The first informant i.e. the Respondent No.2 herein is the sister of one Pestonjee Zilla. The Petitioner No.1 is the sister-in-law of the said Pestonjee Zilla and the Petitioner No.2 is the daughter of the Petitioner No.1. The cause for lodging the FIR has arisen in view of the document which the first informant alleges was got executed from the said Pestonjee Zilla by the Petitioner Nos.1 to 5 herein in collusion with the Petitioner No.6 who was at the relevant time was the Sub-Registrar enjoined with the duty of registering the documents in so far as the city of Mumbai is concerned. The FIR in question contains the allegations made against the Petitioner Nos. 1 to 5 and the Petitioner No.6 in some detail. However, having regard to the nature of the order we propose to pass, it is not necessary to refer to the said allegations in detail. Suffice it would be to state that the allegations in the FIR are revolving around the manner in which the document was got executed. The instant FIR bears No.54 of 2012 which as indicated above has been filed by the Respondent No.2 herein. Another sister of the Respondent No.2 who is also the sister of the said Pestonjee Zilla had also registered the FIR in respect of the execution of the same document being C.R. No.38 of 2009 with the C.B. CID, EOW, Unit No.3, Mumbai. The said FIR ultimately culminated in Criminal Complaint No.1110/PW/2010 which was

pending before the Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court Esplanade Mumbai. The Petitioners Nos.1 to 5 herein and the Petitioner No.6 had filed 2 separate applications being Criminal Application No.655 of 2011 and Criminal Writ Petition No.636 of 2011 respectively, for quashing the said criminal proceedings being Criminal Complaint No.1110/PW/2010 arising out of C.R. No.38 of 2009. A Learned Single Judge of this Court by order dated 4-8-2011 allowed both the aforesaid Criminal Application as well as the Criminal Writ Petition. The said applications were allowed in view of the fact that the complainant in the said case i.e. the sister of the said Pestonjee Zilla made a statement that she has no grievance as against the Applicant and the Petitioner. The Learned Single Judge whilst allowing the said proceedings observed that the perusal of the complaint would reveal that the allegations are totally personal in nature. In the context of the challenge raised in the above Writ Petition, it would have to be borne in mind that the factual basis in so far as the said C. R. No.38 of 2009 and the instant FIR is one and the same and the accused are also the same, save and except the complainant, which in the earlier C.R. Being No.38 of 2009 was the other sister of the said Pestonjee Zilla. Since the above Petition was adjourned for the Learned APP to obtain instructions from the Investigating Officer, we inquired from the Learned APP as to what has been uncovered during the investigation, in so far as the Petitioner No.6 Mr. Valvi is concerned. This is in the context of the order dated 8-10-2012 passed by the Division Bench of this Court wherein the

Division Bench has alluded to the allegations which were made against the Petitioner No.6 in the FIR. The Learned APP on instructions informed us that during the course of the investigation it was revealed that proper procedure for execution of the document was not followed by the Sub-Registrar. It is required to be noted that there is no dispute about the fact that the document has been executed and has also been registered in the office of the Sub-Registrar, Mumbai.

3           It would also be necessary to refer to one more fact which in our view assumes some importance. The parties were also before this Court in civil proceedings being Suit No.2761 of 2011 which was filed on the Original Side of this Court. The Respondent No.1 i.e. the first informant F. K. Irani and the beneficiary of the transaction one M. R. Mishra i.e. the Respondent No.3 were Plaintiffs in the said Suit and the other sister i.e. the first informant in the earlier C.R. was the Defendant No.1 to the said Suit. The contesting Defendants were the Defendant Nos.10 to 13 who are the Petitioners in the present Petition. The said Suit was disposed of in terms of the Consent Terms between the Plaintiffs and the Defendant Nos.10 to 13. The Plaintiffs as indicated above comprised of the first informant and the beneficiary of the transaction who is the Respondent No.3 to the instant Writ Petition. The Defendant Nos.10 to 13 as indicated above are the Petitioners in the instant Petition. The said Suit was filed for declaration which as indicated above has

culminated in the Suit being disposed of by the Consent Terms. Hence in so far as the dispute between the parties is concerned i.e. the Petitioners herein and the first informant and the beneficiary Respondent No. 3 herein, the dispute stands concluded by the Consent Terms filed between the parties. The filing of the Consent Terms and the Consent Decree passed on the said basis would undoubtedly have an impact in so far as the entitlement of the Petitioners to the relief sought in the above Petition. Though the order passed by the Learned Single Judge which is dated 4-8-2011 was prior to the order admitting the above Petition as also the Consent Terms resulting in passing of the Consent Decree, the Division Bench as the order dated 8-10-2012 discloses, has taken into consideration the submission which was advanced on behalf of the first informant calling in question the statements which are appearing in the FIR which gave rise to the Division Bench making an observation that the matter requires closer scrutiny.

4           In the light of the statement made by the Learned APP which as indicated above was to the effect that proper procedure was not followed by the Sub-Registrar in respect of the execution of the document. The conduct of the Sub-Registrar in our view would at the highest amount to proper procedure being not followed by him and thereby some irregularity having been committed by him in the matter of the execution of the document in question. However, the fact remains that there is no dispute about the

execution of the document. The Petitioner No.6 has also superannuated. In so far as the first informant in the instant case is concerned, i.e. the Respondent No.2 the Learned Counsel Mr. Satyanarayanan reiterates the no objection which the first informant i.e. the complainant has to the quashing of the FIR in question. The fact that the FIR being C. R. No.38 of 2009 involving the self same allegations has already been set aside by a Learned Single Judge of this Court, also cannot be lost sight of.

5           In the light of the facts as aforesaid, we are of the view that no useful purpose would be served by continuing with the FIR when the complainant herself on account of the antecedent events has no such desire to continue with the FIR. In the said context a useful reference could be made to the judgments of the Apex Court in the matter of **Gian Singh V/s State of Punjab & Anr<sup>1</sup>** and **Narinder Singh & ors v/s. State of Punjab & Anr<sup>2</sup>**. The said judgments are an exposition of the Apex Court on the scope of the powers under Section 482 and Article 226 of the Constitution of India, for quashing of the FIR / proceeding we are of the view that this is a fit case where the said powers are required to be exercised. The above Writ Petition is therefore required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). Rule is accordingly made absolute.

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<sup>1</sup> (2012) 10 SCC 303

<sup>2</sup> 2014 AIR SCW 2065

6            In the facts and circumstances of the case we deem it appropriate to impose costs of Rs.20,000/- each to be paid by the Petitioner Nos.1 to 5 and the Respondent Nos.2 and 3, totalling to Rs.1,40,000/-, to be deposited with the State Legal Aid Fund within 6 weeks from date. Receipt to be obtained and filed in the registry.

7            In view of the quashing of the FIR, the Investigating Officer is directed to return the documents which have been taken in possession during the course of the investigation.

**[REVATI MOHITE DERE, J]**

**[R.M.SAVANT, J]**