

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 337 OF 2015

Mr. Milind Sambhare.

..Petitioner.

Versus

The Inspector of Police, EOW, Unit-II,
CB, CID Mumbai & Others.

..Respondents.

WITH

WRIT PETITION NO. 4647 OF 2014

Arvind T. Parkar & Others.

..Petitioners.

Versus

The Inspector of Police, EOW, Unit-II,
CB, CID Mumbai & Others.

..Respondents.

Mr. Subodh Desai for the Petitioner in WP No. 337 of 2015

Mr. S.r. Phanse I/b Mr. M. S. Mohite for the Petitioner in WP No. 4647
of 2014.

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

Ms. Mrunamai Kulkarni for Respondent No. 2 (complainant)

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

Date : **October 19, 2018.**

P. C. :

1. Heard the learned counsel for the respective parties.
The Petitioner in Writ Petition No.337 of 2015 is an architect and the
Petitioners in Writ Petition No. 4647 of 2014 are the office bearers of
co-operative housing society.

2. The Petitioners in these petitions are arraigned as

accused in CR No. 308/2013 registered with R. A. Kidwai Marg Police Station. The said FIR is registered at the instance of Respondent No. 2 for the offence punishable under sections 406, 420, 465, 467, 468 and 471 read with 34 of the Indian Penal Code, 1860. Subsequently, the investigation of said CR/FIR was transferred to the Economic Offences Wing of Mumbai, and it was re-numbered as CR. No. 145/2013.

3. The main allegation made in the FIR is that though 159 tenants including Respondent No.2 are entitled for alternate permanent premises/accommodations admeasuring 753 sq.ft. under Development Control Regulation No. 33(7), the office bearers of the society entered into an agreement with the developer to allot the premises admeasuring 430 sq. ft. only.

4. Regarding the entitlement of tenants to get alternate premises, civil proceedings also came to be filed and settlement is arrived at in those proceedings and same are consequently disposed of by the learned Single Judge of this Court vide orders dated 14th February 2018 and 28th August 2018. In pursuant of the understanding arrived at between the parties, they have approached this Court for quashing the subject FIR by consent of complainant.

5. The original complainant – Mr. Mazhar Abdul Hussain has filed an affidavit in the present proceedings. To the said affidavit, he has annexed copies of the orders passed in civil proceedings

whereby the civil proceedings between the parties came to be disposed of by learned Single Judge in terms of the consent terms. In paragraph 4 of the affidavit, said complainant has prayed for allowing the writ petitions, as sought for by the Petitioners.

6. Respondent No.2 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 registered at his instance against the Petitioners.

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of record, it transpires that the allegations made in the FIR are totally personal. 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. 337 of 2015 is allowed in terms of in terms of prayer clause (b) and Writ Petition No. 4647 of 2014 is allowed in terms of prayer clause (A). As the police machinery and Court machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the Petitioner with the costs. The Petitioner in WP No. 337 of 2015 shall pay costs of Rs.10,000/- and the Petitioners in WP No. 4647 of 2014 shall pay cost of Rs.25,000/-, which shall be paid to “**Tata Memorial Hospital**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said costs 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, petitions shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*. Registry will then intimate the concerned Police Station that subject FIR shall not be treated to have been quashed and that police / Magistrate shall proceed against the Petitioners in accordance with law.

9. Both writ petitions stand disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]