

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

**CRIMINAL APPLICATION NO.1176 OF 2017**

**Alkesh Bipinbhai Malvia : Applicant.**  
**Versus**  
**State of Maharashtra and anr. : Respondents.**

**Ms. Pranothi B Pawar for the Applicant.**  
**Ms. P. P. Shinde APP for the Respondent/State.**  
**Ms. Mallika A Ingale for the Respondent No.2.**

**CORAM : R. M. SAVANT &  
SARANG V. KOTWAL, JJ.**  
**DATE : 16<sup>th</sup> MARCH 2018**

**P.C.**

1           The above Criminal Application has been filed for quashing of the FIR being C.R.No.196 of 2017 registered with Kasturba Marg Police Station, Mumbai for the offences punishable under Section 420 of the Indian Penal Code.

2           The said FIR has arisen as a result of the transaction of sale of flat between the Applicant who is the Developer and the Respondent No.2 i.e. the first informant who was the purchaser. It is not necessary to dilate further on facts since after the registration of the said FIR, the parties have entered into an Agreement for Sale on 28/06/2017 in respect of some other flat which the first informant i.e. the Respondent No.2 herein agreed to accept from the Applicant i.e. the Developer.

3           The first informant i.e. the Respondent No.2 herein has also filed an affidavit dated 21/11/2017 which is affirmed in this Court. In the context of the relief sought in the present application paragraphs 5, 8 and 10 of the said affidavit are material and are reproduced herein under :-

“5    I further state that applicant also executed Agreement for sale dated 28.05.2017 with me, which was duly registered with the Sub Registrar of Assurances under no.BDR/2/6087/17, I acquired the right, title and interest, in the said flat along with vacant, actual and physical possession of the said flat no.B/001.

8       That as the Dispute between me and applicant is settle, I undertake not to initiate any proceeding civil/criminal in future against the Applicant, with regard to the subject matter of the FIR no.196 of 2017 registered with Kasturba Marg Police Station.

10    I say that I have no objection for quashing of the F I R being C.R.no.196 of 2017 registered with the Kasturba Marg police station, against the applicant.”

4           Hence by virtue of the statements made in the said affidavit, the factum of the Agreement for Sale dated 28.06.2017 (wrongly mentioned as 28.05.2017) and the registration with the Sub-Registrar of Assurances under No.BDR/2/6087/17 also the factum of the actual, physical possession of the said flat being handed over to the Respondent No.2. It has further come on record that the entire dispute between the parties has been monetarily resolved.

5           The parties have also entered into the Consent Terms which are dated 13/03/2018 executed before Shri A Kalam Khan, Notary, Government of India, having his office at 803/A, Green View CHS. Ltd. Patel Complex, Behind Amar Palace Hotel, Mira Road, Thane. Paragraphs 7 and 10 of the said Consent Terms are material and are reproduced herein under :-

“7   That the Applicant has received the entire consideration for the said flat from the respondent no.2, as per clause 2 of the said Agreement for Sale dated 28/06/2017 and the entire dispute comes to an end.

10   That the respondent no.2, has agreed to give no objection for quashing of FIR. i.e. C.R.No.196 of 2017, registered with Kasturba Marg Police Station against the applicant, and he has also file his affidavit to that effect in this Hon'ble Court.”

6           The Respondent No.2 Anil Jain is personally present in Court. He is identified by the learned counsel Ms.Mallika Ingale. He is also identified by his Aadhar Card bearing No.8829 1305, 3897. When put in the box and queried, he states that he accepts the factum of the Consent Terms dated 13/03/2018 executed between the parties before the Shri A Kalam Khan, Notary, Government of India, having his office at 803/A, Green View CHS. Ltd. Patel Complex, Behind Amar Palace Hotel, Mira Road, Thane. He further states that the affidavit annexed to the above Writ Petition at page 77 is his and that the contents of the said affidavit are acceptable to him and that he has signed the said affidavit of his own free will and volition.

7           The Applicant Alkesh Bipinbhai Malvia is also personally present in Court. He is identified by the learned counsel Ms. Pranothi Pawar. He is also identified by his Aadhar Card bearing No.8125 8429 551. When put in the box and queried, he states that the parties have settled the matter and have accordingly executed the Consent Terms which are dated 13/03/2018. He further states that the Consent Terms are acceptable to him and that he has signed the said Consent Terms of his own free will and volition.

8           Hence the affidavit of the Respondent No.2, the Consent Terms dated 13/03/2018 and the statements made by the Respondent No.2 and the Petitioner when put in the box unequivocally indicate that the parties have settled their dispute as a result of which the Respondent No.2 does not desire to proceed with the Fir in question.

9           Having regard to the judgments of the Apex Court in the matter of Gian Singh V/s State of Punjab & Anr reported in (2012) 10 SCC 303 and Narinder Singh & ors v/s. State of Punjab & Anr reported in 2014 AIR SCW 2065, there is no useful purpose would be served in keeping the proceedings in question pending.

10          The above Criminal Application is required to be allowed and is

accordingly allowed and made absolute in terms of prayer clause (i). In the fact and circumstances of the present case, the Applicant to deposit costs of Rs.10,000/- with the Maharashtra Legal Aid Fund within six weeks from date. Receipt to be obtained and filed with the Registry. The above Criminal Application is accordingly disposed of.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]