

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1385 OF 2018

1. Pushkal Pramod Kumar Srivastav
Age 30 years, Occupation Services
C-28, Sect.E, Aliganj,
Lucknow-226024
Uttar Pradesh
2. Omrendra Padam Singh
Age 26 Years, Occupation Services
Residing at Aurangjebpur,
Bijnur Uttar Pradesh
Pin Code 246731
3. Sumi Ishwar Chandra Jaiswal,
Age 35 Years, Occupation Services
B-2 Sarita Vihar
New Delhi 1000 076 .. **PETITIONERS**

VERSUS

1. State of Maharashtra
2. Abhishek Vijay Bhagat,
Age 31 Yrs. Occu. Agri.
R/o. Burhannagar, Tq. & Dist.
Ahmednagar. .. **RESPONDENTS**

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Mr.Satej S. Jadhav, Advocate for the
petitioners

Mr.R.V.Dasalkar, APP for the Respondent—State

Mr.S.R.Wakale, Advocate for respondent no.2

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**CORAM: S.S.SHINDE &
R.G.AVACHAT, JJ.**

DATE : 04.03.2019

ORAL JUDGMENT: [Per : S.S.Shinde, J.]

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition takes exception to the First Information Report vide Crime No.I-175 of 2018, registered with Bhingar Camp Police Station, Ahmednagar, for the offences punishable under Sections 420, 406, 409 of the Indian Penal Code.

3] Learned counsel appearing for the petitioners invites our attention to the contents of the First Information Report and submits that, even if the contents of the FIR are read in its entirety, it is crystal clear that, the entire dispute is having civil flavor, and the element of the criminality is totally excluded. It is submitted that, in case there is breach of agreement of contract, respondent no.2 has a civil remedy

for redressal of his grievance. It is submitted that, even if the allegations in the FIR are considered, there was delay on the part of the petitioners to fulfill the agreement, in that case also, by any stretch of imagination the criminality cannot be alleged against the petitioners. It is submitted that, respondent no.2 has deposited the amount of Rs.3 lacs, and as against the said amount, the petitioners have returned the amount of Rs.6 lacs to respondent no.2. It is submitted that, it is admitted position that, even if the allegations in the FIR are taken at its face value, and read in its entirety, no offences are disclosed against the petitioners, and the petitioners had no intention to commit such alleged offence; as it is apparent from the gesture of the petitioners that, they have returned the amount of Rs.6 lacs against Rs.3 lacs, which were deposited by respondent no.2.

4] On the other hand, learned APP appearing for the respondent-State and learned counsel appearing for respondent no.2 submit that, if the allegations in the FIR are read in its entirety, an alleged offences are disclosed. It is submitted that, though the joint compromise pursis is placed on record, the petitioners were supposed to give further Rs.50,000/- in lieu of the data and that the said amount is not paid. It is further submitted that, the petitioners had intention to cheat respondent no.2, and therefore, the allegations in the FIR need further investigation, and the petitioners deserve to be tried.

5] We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, learned APP appearing for the respondent-State, and learned counsel appearing for respondent no.2. With their able assistance, we have

perused the contents of the allegations in the FIR, grounds taken in the Petition, annexures thereto, and all other investigation papers made available for perusal of this Court. At the outset it may be relevant to mention that, it is admitted position that, the petitioners have paid Rs.6 lacs to respondent no.2, as against the amount of Rs.3 lacs given by respondent no.2 to the petitioners. The said amount has been returned within three years from the date of depositing such amount by respondent no.2. We have carefully perused the allegations in the FIR, and we are of the opinion that, in case of breach of terms of an agreement between the petitioners and respondent no.2, respondent no.2 had remedy to approach the civil Court or appropriate forum. Therefore, upon reading the allegations in the FIR in its entirety, in our opinion, the allegations clearly disclose the civil dispute. We find

considerable force in the argument of the learned counsel appearing for the petitioners that in similar facts situation, the Supreme Court in the case of *Vinod Natesan Vs. State of Kerala & others*¹, in the facts of that case has concluded that, the breach of agreement will give rise to the civil dispute and not for lodging the FIR.

6] In the light of discussion herein above, an inevitable conclusion is that the First Information Report deserves to be quashed. Accordingly, the impugned First Information Report vide Crime No. I-175 of 2018, registered with Bhingar Camp Police Station, Ahmednagar, District Ahmednagar, for the offences punishable under Sections 420, 406, 409 of the Indian Penal Code, is quashed and set aside.

1 [2019] 2 SCC 401

7] Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

[R.G.AVACHAT]
JUDGE

[S.S.SHINDE]
JUDGE

DDC