

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTON

CRIMINAL APPLICATION NO. 1384 OF 2018

Priyenkumar Shah and Another. ..Applicants.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. H. C. Desai for the Applicants.

Ms. S. D. Shinde, APP for the Respondent-State.

Mr. Vasant L. Bhat - Respondent No. 2 appears in person.

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

Date : March 27, 2019.

P. C. :

1. Heard the learned counsel for the Petitioner, learned APP for the Respondent-State and Mr. Bhat Respondent No.2 in person.

2. This is an application made under section 482 of Code of Criminal Procedure, 1973 seeking to quash the FIR bearing C.R.No. 426 of 2017 registered with Borivali West Police Station at the instance of Respondent No.2 for the offence punishable under sections 403, 406, 420, 465, 467, 468 and 471 read with 120B of the Indian Penal Code, 1860.

3. The Applicants herein apprehending their arrest, had

preferred an anticipatory bail application bearing No. 919 of 2018 before the learned Single Judge of this Court. The parties settled their disputes before learned Single Judge and filed consent terms which were taken on record. On the basis of this settlement, learned Single Judge granted anticipatory bail to the Applicants. Clauses (3) and (7) of the consent terms are relevant, which read as under :

“3. It is agreed that the Applicants shall pay to Respondent No. 2 the amount stated in the complaint filed by Respondent No. 2, i.e., Rs.11,38,846/- (Rupees Eleven Lakh Thirty Eight Thousand Eight Hundred Forty Six only) and same shall be as and by way of D.D. drawn in the name of Respondent No. 2 in the following manner :

- a] *Cheque No.065157 of Rs.3,00,000/- (Rupees Three Lakh only) drawn on IDBI Bank, Thakur village, Kandivali (East) Branch on the execution of these consent terms,*
- b] *Rs.3,00,000/- (Rupees Three lakhs only) on 09/09/2018.*
- c] *Rs.5,38,846/- (Rupees Five Lakh Thirty Eight Thousand Eight Hundred Forty Six only) on or before 9/11/2018.”*

“7. It is agreed between the Applicants and Respondent No. 2 that the Applicant will file appropriate proceedings before the Hon'ble High Court or any other forum as required for quashing of the said FIR vide C.R.No.426 of 2017 of Borivali Police Station.”

4. The Applicants assert that amount mentioned in clause (3) of the said consent terms has been paid to Respondent No.2. Respondent No.2 on specific query admits that this amount is received

by him.

5. In terms of the settlement arrived at between the parties, Respondent No.2 has filed an affidavit dated 6th November 2018. In paragraph 5 he has given no objection to quash the subject FIR against the Applicants. In this affidavit, Respondent No.2 has once again admitted that he has received the amount agreed under the consent terms.

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 initiated by him against the Applicants.

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. 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 the 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, application is allowed in terms of prayer clause (a).** In the facts and circumstances of the case, we find it would be appropriate to saddle the Applicants with the cost of Rs.20,000/- each, 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 Applicants shall pay the said cost and produce the receipts 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, application shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as *non-est*.

9. At this stage, it is pointed out by Respondent No.2 that

on 28th February 2017 he has given report to Senior Inspector of Police, Borivali Police Station, Mumbai under section 154 of the Code of Criminal Procedure, 1973. In this report, Respondent No.2 has alleged that he has paid an amount of Rs.50 lakh to the Applicants from time to time. This payment, however, is not subject matter of the FIR which has been quashed by the present order. Grievance is made by Respondent No. 2 that this complaint is not enquired into by Borivali Police Station. Learned APP on instructions of the officer present in the Court, makes a statement that the said complaint of Respondent No. 2 will be enquired into and appropriate decision would be taken and same will be communicated to the Petitioner within seven days from today. Statement accepted.

10. Mr. Desai, learned counsel for the Applicants submitted that direction may be given to police to return the passports of the Applicants which were seized by them during the investigation. Since we have quashed the proceedings of subject FIR, police need not withhold the passports of the Applicants. Borivali Police Station shall return to the Applicants their passports upon their application.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]