

Urmila Ingale

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

**CRIMINAL WRIT PETITION NO. 169 OF 2020**

Hardik Nitin Gothi  
Age – 31 years, Occ. Business  
Residing at 401, Anuj Apartments,  
96, A.K. Marg, Gowalia Tank,  
Mumbai – 400 036.

....Petitioner

Vs.

1. State of Maharashtra  
(At the instance of Versova Police Station)

2. Mr.Sakharam Balkrishna Naik  
Age about 61 years, Occ. Business  
Residing at 1802/1902, Badrinath Tower,  
Yari Road, Versova, Andheri, Mumbai 400 061 ..... Respondents

Mr.Dinesh Tiwari a/w Mr.Mikhail Dey i/b Dinesh D.Tiwari &  
Associates, for the Petitioner.  
Mr.Ansh K. i/b Deepak Patel, for Respondent No.2.  
Mr.Sakharam Balkrishna Naik – Respondent No.2 present.  
Mr.J.P. Yagnik, APP for the Respondent – State.

**CORAM : S. S. SHINDE &  
M. S. KARNIK, JJ**

**DATE : 22<sup>nd</sup> DECEMBER, 2020**

**ORAL JUDGMENT : (PER M.S. KARNIK, J.)**

. Rule. Rule is made returnable forthwith. Heard  
finally with the consent of learned counsel appearing for the

parties.

2. Learned Counsel for Petitioners seeks leave to amend. Leave to amend is granted.

3. This is a Petition filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal procedure for quashing of FIR bearing C.R.No. 7 of 2019 registered under sections 420, 467, 468, 471, 474 of Indian Penal Code at Varsova Police Station dated 08/01/2019 against the Petitioner by Respondent No.2. Learned Counsel for parties submitted that the parties have mutually agreed to settle the dispute. It appears that transaction related to sale of flat which was sold by one Mr.Rajesh Dahanukar to the informant - Respondent No.2 - Sakharam Balkrishna Naik. As a result of some misunderstanding, Respondent No.2 had some reservations about the ownership of the flat. Learned Counsel for the Respondent No.2 submits that under some misconception, FIR came to be lodged. Mr. Rajesh Dahanukar had a meeting with Petitioner and Respondent No.2 whereupon the misunderstanding and misconception that parties had in respect of sale of the flat came to be clarified. The relevant documents

pertaining to the said flat were duly shown to them whereupon the parties were satisfied with the same and dispute came to be resolved. It is under this misconception that the Respondent No.2 registered the offence also under Sections 461 & 468 of Indian Penal Code. We have interacted with Respondent No.2 who is identified by his Advocate. Our attention is invited to the consent terms dated 18/12/2019 at Exhibit 'D' between the Petitioner and Respondent No.2. The parties have agreed to abide by the consent terms and even the Suit which was filed by the Petitioner in this Court has been decreed in terms of the consent terms. The Decree in terms of Consent Terms is at Exhibit 'E'.

4. The subject flat is part of Badrinath Co-Operative Housing Society. The Secretary of Bardinath Society has also filed an affidavit clearly stating that the Society has no objection if the said FIR is quashed as the matter has been amicably settled between the Petitioner and Respondent No.2

5. Now that the parties have settled the dispute in respect of said flat and even the Suit has been decreed in terms of the consent Terms wherein also Respondent No.2 has

consented for quashing of FIR as against the Petitioner, considering the nature of the dispute, further criminal prosecution would be an exercise in futility as the Respondent No.2 is not going to depose against the Petitioner and therefore possibility of conviction is very remote and bleak. Moreover, entire dispute was pertaining to the ownership of the said flat has been resolved, also in view of NOC of the Society. It is apparent that the dispute between the parties is of a private nature and hence, in the light of the law laid down by the Apex Court in the case of Gyansing Vs. State of Punjab and another, this is fit case of quashing FIR by mutual consent as continuing further prosecution would be an exercise in futility and would tantamount to abuse of process of Court.

6. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**<sup>1</sup> has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal

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

in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidance engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

7. In this view of the matter, to secure the ends of justice and in the light of the consent terms filed before the Civil Court on which basis consent decree is already passed by this Court, the interaction which we had with the Respondent No.2 consenting for quashing of FIR, further that the Respondent No.2 having clearly stated that settlement is a voluntary act on his part and there is no coercion or pressure exerted on him, we are satisfied that no fruitful purpose would be served by continuing with the prosecution.

8. Petition is therefore allowed in terms of prayer clause (a) which reads thus :

“(a)This Hon’ble Court be pleased to issue necessary directions in terms of writ of certiorari or writ of mandamus or any other writ, order or directions calling upon the records and proceedings of FIR No. 7/19 of Versova Police Station and upon examining the propriety, correctness and legality of the investigation conducted so far, be pleased to quash the same.”

9. Parties have agreed to strictly abide by the Consent Terms.

10. The Petitioner to pay cost of Rs.15,000/- to the Juvenile Justice Board account, the details of which are given below, within a period of 4 weeks from today. Payment of cost is condition precedent for quashing of F.I.R.

**Name of Account Holder for J.J. Fund**

DY. COMMI. (CHILD DEVELOP) AND MEM. SECY. & TRY M S  
CHILD FUND.

**Account No. :** 11099464354

**Name and Address of Bank**

State Bank of India  
Pune Main Branch  
Collector Office Compound, Pune.

**Branch Code :** 454

**IFSC :** SBIN0000454

**MICR :** 411002002.

11. Rule is made absolute in the above terms. Writ  
Petition is disposed of.

**(M.S.KARNIK, J. )**

**(S.S.SHINDE, J.)**

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by Urmila P.  
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Date:  
2020.12.28  
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