

Urmila Ingale

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

CRIMINAL APPLICATION NO. 496 OF 2020

1. Mr.Nirav P. Shah
Aged abut 51 years, Occ: business
Indian Inhabitant Residing at
1, Mangal Simran,
28th Road Bandra (w), Mumbai 400 050.

2. Monica N. Shah
Aged about 47 years, Occ : Business
Indian Inhabitant residing at
1, Mangal Simran,
28th Road Bandra (w), Mumbai 400 050.

....Applicants

Vs.

1. State of Maharashtra
At the instance of
Economics Offence Wing, Mumbai

2.Samir Ravi Date
aged about 50 years, Occ: Business
Indian Inhabitant residing at
402, Green Gates,
Master Vinayak Marg,
Bandra (W), Mumbai 400050

..... Respondents

Mr.Dilip H. Shukla, for the Applicants.
Mrs.S.D.Shinde, APP for the Respondent - State.
Mr.Samir Ravi Date - Respondent No.2 present.

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

**RESERVED ON : 15th DECEMBER, 2020
PRONOUNCED ON : 21st DECEMBER, 2020**

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. This is an application filed under section 482 of the Code of Criminal Procedure by the applicants for quashing of FIR bearing No. 73 of 2017 registered with Bandra Police Station for the offences punishable under sections 420, 120(B) of the Indian Penal Code.

3. The dispute between the parties is regarding a flat which the petitioners had agreed to allot by way of sale to respondent No.2 in their project. The allegations in FIR are that despite paying the agreed consideration, the petitioners did not hand over the flat to respondent No.2.

4. The parties jointly submit that matter between them has been amicably settled. We have interacted with respondent No.2. He says that the issue between the petitioners and himself has been resolved. He says that he is no more interested in

continuing with the criminal case. The parties are now having cordial relations.

5. Our attention is invited to the Memorandum of Understanding ('MoU' for short) dated 21/09/2020 which is at Exhibit 'F' to the petition whereunder terms and conditions of the settlement are stipulated. Clause 11 of the MoU mentions that both the parties undertake to abide by the terms of this MoU and have executed the same on their own free Will, without any pressure or coercion. Clause 8 of MoU further records that the cost imposed, if any, by this Court while quashing FIR shall solely be borne by the developer alone.

6. We have gone through the MoU. The dispute between the parties essentially has a civil flavour which has now been settled pursuant to MoU at Exhibit 'F'. Learned Counsel for the parties on instructions again reiterated that parties would strictly abide by the terms and conditions of MoU and that the petitioners are duty bound to honour commitment made in the MoU. This statement is accepted. The parties to strictly abide by the terms of the settlement.

7. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ 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 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.

1 2012 (10) SCC 303

8. Considering the MoU and the agreement for sale dated 21/09/2020 and the interaction we had with respondent No.2, it is clear that the respondent No.2 is not going to depose against the petitioners in the said criminal case & therefore chances of conviction of petitioners is remote and bleak. As the matter has been settled, no useful purpose would be served by keeping the criminal case pending. Continuation of the criminal proceedings will be an exercise in futility and therefore to secure the ends of justice and prevent the abuse of the process of the Court, the request made by the parties for quashing of FIR by consent deserves to be accepted. In the fact situation of the present case, it is necessary to impose cost on the petitioners. Hence, the following order.

ORDER

(i) The Petition is allowed in terms of prayer clause (a) subject to payment of cost. Prayer clause (a) of the Petition reads thus :

“(a) That this Hon’ble Court be pleased to invoke its power under section 482 of Cr.P.C and quash and /or set aside the FIR bearing No. 73 of 2017, registered by the Economics Offence Wing, Mumbai under section 420, 120(B) of IPC.”

(ii) The Petitioners to pay total cost of Rs.1,00,000/- (Rs. One Lakh only) within a period of 4 weeks from today in the following manner.

(a) Petitioners to pay cost of Rs.50,000/- in the below mentioned account of Bar Council of Maharashtra and Goa Covid - 19 the details of which are :

Bank Name : Bank of India

Branch Name : Main Branch, Fort, Mumbai

A/c Name : "Bar Council of Maharashtra and Goa Covid - 19"

A/c. No. : 000110110013597

IFSC Code : BKID0000001.

(b) The balance cost of Rs.50,000/- to be paid in the below mentioned account of the Police Welfare Fund the details of which are :

Bank Name : Axis Bank Ltd.

Branch Name : Worli, Mumbai - 400025.

A/c Name : Police Welfare Fund

A/c No. 914010029005759

IFSC Code : UTIB 0000060

9. It is made clear that this order will operate only after payment of cost.

10. Rule is made absolute in the above terms.
Application is disposed of.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

Urmila
P.
Ingle

Digitally
signed by
Urmila P. Ingle
Date:
2020.12.21
19:46:57
+0530