

Bhogale

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

CRIMINAL WRIT PETITION NO. 6031 OF 2019

1. Mr. Deepak Kaistha

Age : 45 Occ.:Business

Residing at C1C106, Carlton Estate, DLF

PH 5 Gurgaon

Mobile 9810134339

Email dk@turkblue.com

2. Mr. Anubhav Saxena

Age : 42 Occ.: business

Residing At 704, Bhagwati CGHS,

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Mobile 9911495900

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.. Petitioners

Versus

1. The State of Maharashtra

Through Kasturba Marg Police Station

2. Mr. Siddarth Dheliya

Plot No.16, Bhagya Laxmi Building

Andheri CHS Ltd V.M. Road Andheri West

Mumbai 58.

.. Respondents

Ms. Sadhana Kumar for the Petitioners.

Mr. Siddesh Bhole a/w Mr. Nikhil Ghate I/b. SSB Legal & Advisory
for the Respondent No.2.

Mr. J.P. Yagnik, APP for State.

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

**RESERVED ON : DECEMBER 08, 2020
PRONOUNCED ON : DECEMBER 22, 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. By this Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), the Petitioner prays for quashing of the First Information Report ('FIR' for short) No.459 of 2017 registered with the Kasturba Marg Police Station under Section 420 read with 34 of the Indian Penal Code, 1860 ('IPC' for short) and Section 66(D) of the Information Technology Act against the Petitioners.

3. The brief facts of the case are as under :-

The Respondent No.2 is the first informant and the FIR is lodged against the Petitioners and other co-accused at his

instance. The Petitioners are the Directors of a Gurgaon based company in Haryana, operating under the name and style of 'Turkblue Management Private Limited'. The first informant was their client. It is alleged by Respondent No.2 that the Petitioners and other accused induced the first informant to part with sum of Rs.50 lakhs falsely projecting that he will get good returns from the business pertaining to the sale of mobile handsets and clothes. However, the assurance turned out to be false and the informant realised that he was cheated. The respondent No.2 - informant therefore lodged the instant FIR.

4. Learned counsel for the Petitioners as well as Respondent No.2 jointly submit that the parties have settled their dispute. Our attention is invited to the affidavit-in-reply filed on behalf of Respondent No.2. In the affidavit it is stated by the Respondent No.2 that there were some financial disputes between the Petitioners and the Respondent No.2 and so far as the Petitioners and Respondent No.2 are concerned, the parties have arrived at an amicable settlement. The terms are mentioned in the affidavit filed by the Respondent No.2. The Respondent No.2 has settled the dispute only qua the Petitioners and not with other co-accused.

5. Learned counsel for the Respondent No.2 would submit that as the dispute between Petitioners and the Respondent No.2 is amicably settled, the Respondent No.2 has no objection if the FIR is quashed only against the Petitioners. In the affidavit it is stated by the respondent No.2 that he has no objection if the amount of Rs.10 lakh which is directed to be maintained in the account of the 'Turkblue Management Private Limited' by the concerned jurisdictional Magistrate is utilised by the company to settle the claim as mutually agreed.

6. Learned APP opposed the request made by the learned counsel for the Petitioners and Respondent No.2 to quash the FIR qua the Petitioners only. Learned APP would submit that it would not be permissible in law to quash the FIR only against some of the accused as the prosecution has also invoked Section 34 of the IPC. His submission therefore is that unless the respondent No.2 settles the dispute with all the accused and only in the event a joint request is made by all the accused to quash the FIR by consent, only then a Writ Petition for quashing of the FIR would be maintainable.

7. Learned counsel for the petitioners in support of his submission that quashment of the FIR in part even against some

of the accused is permissible, relied upon the decisions of the Apex Court in the case of **Lovely Salhotra and Another Vs. State (NCT of Delhi) and Another¹**, **Sushil Sethi and another Vs. The State of Arunachal Pradesh and others²**, **Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and another³**. Learned counsel also relied upon the decision of the High Court of Delhi in the case of **Mrs. Poonam Khanna Vs. State & Ors.⁴** to submit that the FIR can be quashed as against some of the accused also.

8. We have interacted with Respondent No.2. He reiterated what is stated in the affidavit and submitted that the Petitioners and Respondent No.2 always had cordial business relations except for the present dispute which now they have decided to resolve. The respondent No.2 submitted that the compromise entered into between the petitioner and respondent No.2 is voluntary act on his part and there is no pressure or coercion exerted. He reiterated the terms of settlement as recorded in the affidavit filed on his behalf and that he would abide by the same. The respondent No.2 stated that he does not want to proceed against the present petitioners. The respondent No.2 is identified

1 (2018) 12 SCC 391

2 Criminal Appeal No.125 of 2020,

3 (2012) 12 SCC 401

4 2018 SCC OnLine Del 6918

by his Advocate.

9. From the averments made in the Petition and in affidavit-in-reply and interaction which we had with the respondent No.2, it is obvious that the parties had cordial business relations prior to this dispute. The instant dispute being a commercial dispute and now that the petitioners and the respondent No.2 have decided to resolve the same, we do not think that there is any impediment in law to quash the FIR against some of the accused (petitioners) albeit in part in the light of the judicial pronouncement which we have referred to hereinafter.

10. The Hon'ble Supreme Court in the case of **Lovely Salhotra** (supra) in paragraphs 2 and 3 has observed thus :

“2. We have seen the order so passed by the High Court of Delhi on 19-12-2016 whereby it has rejected the application of the appellants herein filed by them under Criminal Writ Jurisdiction under Article 226 of the Constitution of India, for quashing the First Information Report No.520/2015, Police Station Mianwali Nagar, West Delhi registered under Sections 420/494/506 and 34 of the Indian Penal Code and further proceedings emanating therefrom.

3. We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants herein. The High Court was wrong in holding that the FIR cannot be quashed in part and it ought to have appreciated the fact that the appellants herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2

herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos. 2, 3, 4 and 6 prima facie. According to us, the FIR in question filed against the appellants herein by Respondent No.2 is only an afterthought with the sole intention to pressurise the appellants not to prosecute their criminal complaint filed by them under Section 138 of the Negotiable Instruments Act, 1881.”

11. No doubt the Apex Court in the case of **Lovely Salhotra** has taken into account the facts of the matter in question that no cognizable offence is made out against the appellant therein, nonetheless, in our opinion, from the decision of the Hon’ble Supreme Court we can safely deduce the principle that it is not impermissible to quash the FIR qua some of the accused depending on the facts and circumstances of each case.

12. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**⁵ 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

5 2012 (10) SCC 303

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 has also held inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

13. In the light of the law laid down by Their Lordships in the case of **Giansingh** (supra), we are of the considered opinion that the facts and circumstances of the present case are not such that the nature of the crime can be said to be heinous and serious. The respondent No.2 under an impression that he was induced by the petitioners to part with substantial some of money which will get him good returns from the business pertaining to the sale of mobile handset and clothes, felt cheated. The FIR is registered for the offence of cheating and under Section 66 D of the I.T. Act. The respondent No.2 who had

business relations with the petitioners, if later on resolved the dispute with some of the co-accused (petitioners), there is no reason why the FIR cannot be quashed in part. In our opinion, the petitioners should not be allowed to continue to suffer the criminal prosecution despite the respondent No.2's insistence that he does not want to proceed against the petitioners. The present dispute, in our opinion, clearly falls in the realm of a wrong which is basically private and personal in nature arising from commercial/financial dispute which by no stretch of imagination can be said to be heinous or serious offence imposing a restraint on our jurisdiction to quash the criminal proceeding qua the petitioners.

14. In the present facts, the respondent No.2 was aggrieved by the projection made by the accused that if he parts with a sum of Rs.50 lakhs he will get good returns from the business pertaining to the sale of mobile handsets and clothes. This however did not materialise and therefore the Respondent No.2 filed the criminal case. Considering the nature of the transaction, and the averments made in the affidavit filed by the respondent No.2, we are satisfied that the criminal case instituted by the Respondent No.2 predominantly has civil a flavour as the present offence is arising from a commercial/financial dispute between

the petitioners and the respondent No.2. This leads us to infer that the wrong which the respondent No.2 suffered is basically private and personal in nature. In such circumstances, if the respondent No.2 is satisfied that the said wrong is suitably redressed on account of the settlement arrived at between the petitioners and the respondent No.2, there is no reason why in such a case the FIR cannot be quashed partly against some of the accused (petitioners).

15. In our opinion, the petitioners and the respondent No.2 having resolved the dispute, continuing the criminal prosecution against the petitioners would be unfair and/or contrary to the interest of justice as that would tantamount to an abuse of process of law despite settlement and compromise between the parties. In the light of the affidavit filed by the respondent No.2 and the response of the respondent No.2 in the course of the interaction which we had with him, we find that the possibility of the conviction so far as the petitioners are concerned 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 the petitioners by not quashing the criminal case albeit partly despite full and complete settlement and compromise between the petitioners and respondent No.2.

We are of the considered view that continuation of the criminal proceedings against the petitioner would not be in the interest of justice and therefore, to secure the ends of justice, the present Petition deserves to be allowed, however, subject to imposing costs payable by the petitioners. Hence the following order :

ORDER

1. The Writ Petition is allowed in terms of prayer Clause (a), which reads thus :

“(a) Be pleased to direct to quash the FIR No.459 of 2017 registered with Kasturba Marg Police Station under section 420, 34 of IPC and section 66 D of the I.T. Act against the petitioners.”

2. The petitioners to pay cost of Rs.50,000/- collectively to Juvenile Justice Board Account, the details of which are given below, within a period of four weeks from today.

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

3. Payment of cost shall be condition precedent for quashing of the FIR.

16. Rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

17. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

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signed by
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