

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.24 OF 2021

Rajib Kumar Purohit .. Petitioner
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Ashutosh Gaikwad, i/b. Apex Law House, for the Petitioner.

Mrs. S.D. Shinde, APP, for Respondent State.

Mr. Rohan Sonawane, for Respondent No.2.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 8 DECEMBER 2021.

P.C:-

Heard learned Counsel for the parties. Taken up for disposal. Leave to amend is granted to place the charge-sheet on record and to carry out necessary averments in the pleadings and the prayers.

2. The Petitioner has filed this petition for quashing FIR, C.R.No. 477/2020 of Kanjurmarg Police Station and C.C. No.290/PW/2021 pending before learned 53rd Metropolitan Magistrate, Mulund, Mumbai and the consequential proceedings arising from the said FIR and charge-sheet.

3. The FIR was lodged by the employee of Ingenico E Payment India Pvt. Ltd. (IEPL) on the allegation that IEPL has transferred an amount of Rs.2,85,73,140/- in the bank account of HDFC Bank from June 2018 to July 2019, which was to be paid for JHP Foundation, Rajkot. JHP Foundation did not get the money and when they confronted IEPL about non-payment of receipt, then it came to the notice that the amount was transferred to Gandhi School of Engineering, Behrampur, Orissa, i.e. the institution of which the Petitioner is the Secretary. As per the FIR, when IEPL asked Gandhi School of Engineering to return the money, the same was refused on the allegation that the amount was embezzled. The FIR was lodged under Section 406 read with Section 34 of IPC.

4. The learned Counsel for the Petitioner submitted that the petition was filed seeking to quash the FIR on merits, however, there is a settlement that has taken place between the parties and consent affidavit of the original complainant-authorized representative of IEPL is filed. The learned Counsel for Respondent No.2 reiterates that the settlement is arrived at between the Petitioner and Respondent No.2 and there is a settlement agreement executed on 17 August 2021, wherein schedule of repayment is provided for. The learned Counsel for the parties state that this being the commercial transaction, which does not have repercussions on the society, and the said FIR can be quashed by consent as in the decision of Supreme Court in the case of

*Gian Singh vs. State of Punjab And Another*¹. The learned APP submitted that investigation is complete and the charge-sheet is filed and it was found that the amount, as was received by Respondent No.2, has been invested in the fixed deposit.

5. Considering the nature of the allegations in the FIR where the amount was received by the Petitioner through the error of Respondent No.2, the mere fact that the Petitioner, the Secretary of the institution, deposited the amount in fixed deposit would not mean there are large scale implications on the society. The consent affidavit is filed. Respondent No.2 annexed the settlement agreement, which refers to repayment of total amount of Rs.2,20,00,000/- (Two Crores Twenty Lakhs) and in the settlement, Respondent No.2 has acknowledged that due to overall economic and market dynamics changing drastically due to the outbreak of pandemic of Covid-19 since after the inadvertent transfer of funds to GSE and with the view to purely put an end to the dispute, the settlement was arrived. The settlement agreement refers to four post dated cheques.

6. Considering these facts, we are of the opinion that the dispute that the FIR alleged in these circumstances does not have any large scale impact on the society is a purely an inadvertent error is a commercial transaction, which the parties have reversed by consent. The benefit of the law laid down by the Apex Court in the case of

1 (2012) 10 Supreme Court Cases 303

Gian Singh, thus should be extended to the facts of this case.

7. Accordingly, the writ petition is allowed in terms of prayer clause (c) as amended:

“(c) That after examining the legality, validity and/or propriety of the said FIR, this Hon’ble Court be pleased to quash and set aside the FIR, C.R. No.477/2020 of Kanjurmarg Police Station and C.C. No.290/PW/2021 pending before learned 53rd Metropolitan Magistrate, Mulund, Mumbai.”

8. Ordered accordingly.

9. The Petitioner and the Respondents will pay an amount of Rs.50,000/- each, to the Maharashtra State Police Welfare Fund, within period of four weeks and lodge a receipt in the Registry. This order is conditional upon the payment as above.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)