

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

CRIMINAL WRIT PETITION NO. 133 OF 2021

Kelvin Cheung

Age- 40 years, Occ- Chef,

Presently in Mumbai

Permanent Address: 46, Duborg Drive,

Markham, Ontario, Canada.

...PETITIONER

Versus

1. The State of Maharashtra
Through Senior Inspector of Police
Khar Police Station, Mumbai.

2. Mr. Ranjitsingh Bindra
Director at Aallia Hospitality Pvt. Ltd.
Having address at A 71 Cozy Home
Pali Hill, Bandra West,
Mumbai 400050.

...RESPONDENTS

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Mr. Subodh Desai i/b. Mr. Kartik Garg for Petitioner.

Mr. Kalpesh Joshi for Respondent No. 2.

Mr. Ranjitsingh Bindra Respondent No. 2 present through VC.

Mr. K.V. Saste, APP for State.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

DATE : JANUARY 22, 2021.

ORAL JUDGMENT [PER S.S. SHINDE, J.]:

1. Rule. Rule made returnable forthwith and heard with the consent
of learned counsel appearing for the parties.

2. It is jointly submitted by the learned counsel appearing for the Petitioner and Respondent No. 2 that the parties have amicably settled the dispute and to that effect affidavit is tendered across the bar, the same is taken on record. Mr. Subodh Desai learned counsel appearing for the Petitioner also submitted that the Petitioner's accounts are frozen because of the impugned FIR and also Petitioner's pass port is seized and look out circular is also issued to the Petitioner. He submits that it is only because of the impugned FIR that the said action has been taken against the Petitioner. He further submits that there is no antecedent and criminal case pending against the Petitioner.

3. The parties are identified by their respective advocates. Respondent No. 2 is present through video conferencing. We have interacted with Respondent No. 2. He stated that it is his voluntary act to enter into such settlement and pray for quashing of FIR subject to compliance of the consent terms arrived at between the parties.

4. We have carefully perused the affidavit of Respondent No. 2. Para 3 to 11 of the said affidavit reads thus:-

3. I say that after registration of the FIR, some friends and well-wishers intervened into our dispute and with their help, the accounts were reconciled with respect to

claims made by us against each other. Pursuant thereto, it was realized that the present dispute is an outcome of misunderstanding with the Petitioner. Upon adjusting the claims made by myself against the Petitioner and Late Mr. Chi Ping Cheung with respect to investments made by him and also upon considering the claims of Mr. Kelvin Cheung against myself with respect to his employment with the Restaurant Bastian', it is realized that an amount of Rs. 1,00,00,000/ (Rs. One Crore) is due and payable by the Petitioner to myself which the Petitioner has agreed to pay as a full and final settlement to the present dispute. In view of such agreement and upon considering the long business relationship and association with the Petitioner, I have agreed to settle the dispute and claims amicably with the petitioner.

4. Accordingly, I had filed my Affidavit giving no objection for the grant of bail to the Petitioner before the Ld Metropolitan Magistrate Court and also before the Sessions Court, Mumbai. The Sessions Court, Mumbai in view of the settlement and the Affidavit filed by me giving no objection to the grant of bail to the Petitioner, was pleased to release the petitioner on bail by its order dated 05/01/2021.

5. I say that accordingly, I have executed the Consent Terms on 14 January 2021 which is annexed as Exhibit D to the above Petition (hereafter the said Consent Terms")

with the Petitioner wherein it is agreed that the Petitioner will pay me an amount of Rs. 1,00,00,000/- (Rs. One Crore) in following manner:

(a) An amount of Rs. 30,00,000/- (Rs. Thirty Lakhs) to be paid by the Petitioner upon execution of the Consent Terms, and

(b) Further amount of Rs. 70,00,000/- to be paid over a period of fourteen months in fourteen equal installments of Rs. 5,00,000/- (Rs. Five Lakhs) each which the Petitioner has agreed to transfer before the 10th day of each month for the next fourteen months.

6. In lieu of the above, fourteen post dated cheques of Rs. 5,00,000/- (Rs. Five Lakhs) each have also been handed over to me with an understanding that the same will not be encashed till the parties comply with the Consent Terms and it is given only as a security and to be returned back to the Petitioner upon payment of each monthly installment.

7. I say that pursuant thereto, an amount of Rs. 30,00,000/- (Rs. Thirty Lakhs) has already been transferred by the Petitioner in my account on 07/01/2021 and 08/01/2021 in three tranches of Rs. 15,00,000/- 13,00,000/- and 2,00,000/- respectively. The Petitioner has also handed over the fourteen post dated cheques of Rs. 5,00,000/- each in accordance with the Consent Terms.

8. *I say that I now realize that the present dispute was outcome of misunderstanding that arose after the death of Mr. Chi Ping Cheung, the father of the Petitioner. I say that the entire issue giving rise to the subject F.I.R. has been amicably resolved among the Petitioner and myself. I hereby unconditionally withdraw all the allegations in my complaint being CR No. 624 of 2020. In the view thereof I do not wish to proceed with the case pertaining to present FIR bearing No. 624 of 2020 registered with the Khar Police Station for offences punishable under Section 406 and 420 of the IPC.*

9. *The Petitioner has assured and represented to me that the amounts to be paid under the said Consent Terms will be paid on the promised dates without any default as an undertaking given to this Hon'ble Court and in case of any default, I will be entitled to deposit the post dated cheques issued to me and I will also have recourse to the remedies available in law for such default.*

10. *Subject to the Petitioner complying with his obligations under the said Consent Terms (Ex. D to the Petitioner), I undertake that I will not proceed against the Petitioner in the future by adapting any legal civil/criminal remedy or in any other manner whatsoever in the connection with the subject F.I.R.*

11. In the aforesaid situation, I don't have objection if the present Petition is allowed and my complaint being CR No. 624 of 2020 registered with Khar Police Station is quashed and set aside.

5. Keeping in view the settlement arrived between the parties, averments in the affidavit of Respondent No. 2, consent terms arrived between the parties and our interaction with Respondent No. 2, we are of the considered view that the further continuation of investigation of C.R. No. 624 of 2020 registered with Khar Police Station, under section 406 and 420 of IPC, would be an exercise in futility.

It appears that predominatingly the dispute is of civil nature. The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ 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

¹ 2012 (10) SCC 303

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 guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

6. In the light of discussion in foregoing paragraphs, we are inclined to allow this petition, subject to depositing the amount of Rs. 1,00,000/- (Rupees One Lakh only) by the Petitioner in the Juvenile Justice Fund. Hence, we pass the following order :-

ORDER

a] The writ petition is allowed. Rule made absolute in terms of prayer clauses (b), (d) and (f) which read thus:-

b. This Hon'ble Court may by invoking writ jurisdiction under Article 226 of the Constitution of India any be exercising its inherent powers under section 482 of Criminal Procedure code, issue appropriate writ, order or direction and the FIR vide C.R. No. 624 of 2020 registered with Khar Police Station, under section 406 and 420 of IPC be quashed and set aside.

d. That the notice issued under Section 102 of the CrPC thereby freezing the HDFC bank account of the Petitioner having account No. 00851140068274 HDFC Bank, Branch: Vasant Vihar, Delhi may kindly be quashed and set aside;

f. That the look out circular issued against the Petitioner pursuant to the present FIR may be quashed and set aside.

- b]** The Petitioner to deposit the amount of Rs.1,00,000/- (Rupees One Lakh only) in Juvenile Justice Fund, within two weeks from today. The details of the account are mentioned herein below:-

Name of Account Holder

For J.J. Fund- DY.COMMI. (CHILD DEVELOP) AND MEM. SECY. & TRY M S CHILD FUND

Account No.- 11099464354

Name & Address of

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

Branch Code- 454.

IFSC- SBIN0000454.

MICR- 411002002.

- c]** The Petition is disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)