

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1595 OF 2021

Ibrahim Ahmed Taja]
Aged 48 years, Occ : Business]
Residing at B Wing, Flat No.203]
Shivdas Champs Marg, Mazgaon,]
Mumbai – 400010]..... Petitioner.

Versus

1] The State of Maharashtra]
(At the instance of Pydhonie Police Station,]
Mumbai vide C.R. No.82 of 2015)]
2] Mohd. Ali Abdul Kadar Patel]
Aged 45 years, Occ : Business]
23, Amina Mansion, 12-A, 3rd Floor,]
Kolsa Street, Pydhonie, Mumbai-4000003]..... Respondents.

Mr. Mithilesh Mishra i/by Mr. Pradeep Dube for the Petitioner.
Mrs. S D Shinde, APP for the Respondent No.1/State.
Mr. Karan Mehta i/by Karan Mehta & Associates for Respondent No.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

Reserved on : 23rd August 2021
Pronounced on : 30th August 2021

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 The Criminal Writ Petition has been filed by the Petitioner for the
following substantial relief :-

(b) That this Hon'ble Court be pleased to issue appropriate writ, order and direction for quashing of the FIR No.82 of 2015 for offences punishable U/s. 420, 465, 467, 468, 471 r/w 34 of I.P.C. registered with Pydhonie Police Station at the behest of the Respondent No.2 and filing of charge-sheet vide C.C. No.534/PW/2017 pending before Ld. Addl. C.M.M., 2nd Court at Mazgaon, Mumbai on such terms and conditions as this Hon'ble Court may deem fit and proper.”

3 It is the case of the Petitioner that, the Respondent No.2/Complainant and his wife Mrs. Sabina M Patel had purchased a building known as Patel Mansion situated at 49/55, Sheriff Devji Street, Chakla, Mumbai – 400 003 bearing City Survey No.781 of the Mandvi Division by a registered Deed of Conveyance dated 27/01/2012 from the then owner. It is alleged by the 2nd Respondent that, the Petitioner and one Mr. Hasan Ali Abbas Ali Sandol had illegally encroached upon the vacant space on the third floor of the said building and had illegally constructed room Nos.27(a) and 28(a) and have obtained electricity connections by submitting forged rent receipts, without permission of the 2nd Respondent. The 2nd Respondent has made a complaint to the MCGM regarding unauthorized construction of the said two rooms, however, no action was initiated by the MCGM in respect of the said complaint. Therefore the 2nd Respondent lodged a complaint against the Petitioner and the said Hasanali Sandol with Pydhonie Police Station, pursuant to which FIR No.82 of 2015 dated 19/03/2015 for the offences punishable

under Sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code, came to be registered against the Petitioner and the said Hasanali Sandol. After completing the investigation, a charge-sheet came to be filed against the Petitioner before the Court of Id., Addl. C.M.M., 2nd Court at Mazgaon, Mumbai vide C.C. No.534/PW/2017.

4 The learned counsel appearing for the Petitioner submitted that the Petitioner and the 2nd Respondent have amicably settled their dispute and agreed to jointly pray for quashing the impugned FIR and the charge-sheet. It is also submitted that the Petitioner has handed over peaceful and vacant possession of the Room Nos. 27-A and 28-A to the Respondent No.2 by executing Affidavit-Declaration-Cum-Indemnity Bond.

5 The learned counsel appearing for the Petitioner and Respondent No.2 jointly submit that the parties have settled the dispute amicably and have arrived at out of court settlement. It is further submitted that in view of the said amicable settlement the 2nd Respondent has given consent to withdraw the aforesaid proceedings. It is submitted that the Petitioner has filed the present Writ Petition for quashing the impugned FIR/Charge-sheet filed against the Petitioner at the behest of the 2nd Respondent.

6 This matter was on board on 23/08/2021. The 2nd Respondent

was present. When we interacted with the 2nd Respondent, he stated that it is his voluntary act to enter into the settlement and execute affidavit-declaration-cum-indemnity bond without any coercion and pressure. He further stated that he does not wish to continue with the proceedings filed against the Petitioner and has no objection to quash and set aside the impugned FIR/charge-sheet.

7 The 2nd Respondent has filed his affidavit dated 16/03/2021 which is annexed to the Paper Book. In paragraphs 1 to 9 of the said Affidavit, the 2nd Respondent has stated thus :-

“1 That on my complaint, Pydhonie Police Station has registered FIR No.85/2015 dated 19/03/2015 of commission offences punishable u/s. 420, 465, 467, 468, 471 r/w 34 of Indian Penal Code, 1860 came to be registered against the Petitioner herein and another accused i.e. Hasan Ali Abbas Alia Sandol. In the said FIR, it is my specific case that Petitioner and Mr. Hsan Ali Abbas Ali Sandol had conspired together between the year 2007-2008 and have illegally encroached and had illegally constructed room Nos. 27-A and 28-A in the vacant space and have obtained electricity connections in their names by submitting forged rent receipts with B.E.S.T. Undertaking.

2 That, after completing investigation the Police has filed a charge-sheet against the Petitioner before the Court of Ld. Addl. .M.M., 2nd Court at Mazgaon, Mumbai vide C.C. No.534/PW/2017.

- 3 Further, the Petitioner has handed over peaceful and vacant possessions of said room Nos.27-A and 28-A to me by executing document viz. Affidavit-declaration-cum-indemnity bond dated 17/03/2020. The copy of the said affidavit-declaration-cum-indemnity bond dated 17/03/2020 is annexed herewith and marked as Exhibit "A". The Petitioner has amicably settled their dispute and agreed to quash the FIR No.82/2015 and the subsequent charge-sheet vide C.C. No.534/PW./2017 filed thereafter. Hence I am withdrawing all allegations against the Petitioner concerning FIR No.82/2015 and the subsequent charge-sheet vide C.C. No.534/PW/2017 and have no grievances of whatsoever nature against the Petitioner.
- 4 That I am no longer interested in continuing with the criminal prosecution against the Accused named in aforesaid FIR No.82/2015 and the subsequent charge-sheet vide C.C. No.534/PW/2017 which was initiated at my behest.
- 5 That in view of aforesaid all the allegations against the Petitioner shall stand as withdrawn and I have no grievances of whatsoever nature against Petitioner.
- 6 That it is agreed between myself and Petitioner that we shall not file any other proceedings against each other before nay Court of law or any other authority in future relating to subject matter of disputes which was amicably

settled.

- 7 That neither party/s will file any frivolous & mischievous complaints/allegations against each other before any Court of law or any other authority in future relating to subject matter of disputes as settled. That neither parties will in any manner harass, annoy or interfere with the each other and will not file any case/s of any nature including civil or criminal nature in future against each other touching the subject matter as stated herein.
- 8 In the above facts and circumstances, I pray that the Writ Petition be allowed and the criminal proceedings being FIR No.82/2015 and the subsequent charge-sheet vide C.C. No.534/PW./2017 for commission of offences punishable U/s. 420, 465, 467, 468, 471 r/w 34 of IPC against the Petitioner may be quashed and set aside.
- 9 Thus in the light of aforesaid I am filing present Affidavit putting on true and correct fact of amicable settlement on record and dispose of the aforesaid Writ petition (St.) No.1536 of 2021 by allowing the same.”

8 The learned counsel for both the parties submit that both the parties have voluntarily agreed to settle the disputes and differences between them, and there is no coercion, undue influence or force upon them for arriving at the settlement.

9 In view of settlement arrived at between the parties, no fruitful purpose will be served by continuing the further proceedings in the impugned FIR/Charge-sheet filed by Respondent No.2 against the Petitioner.

10 We have carefully perused the material placed on record including the Affidavit-Declaration-Cum-Indemnity Bond executed between the parties as also the affidavit filed by the 2nd Respondent giving his consent to quash and set aside the impugned FIR registered by him against the Petitioner.

11 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

1 2012 (10) SCC 303

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.

12 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Petitioner in the impugned FIR, and further continuation of proceedings would tantamount to the abuse of the process of the Law/Court. Since the first informant i.e. the 2nd Respondent is not going to support the allegations in the FIR, the chances of conviction of the accused would be remote and bleak. On overall consideration, we found that the impugned FIR is the outcome of a personal dispute between the Petitioner and the 2nd Respondent.

13 It is pertinent to note at this stage that though the parties have resolved/settled their disputes between them and approached this Court for quashing of the FIR/Charge-sheet filed by the 2nd Respondent against the Petitioner, we deem it appropriate to impose costs of Rs.10,000/- (Rupees Ten Thousand only) each on the Petitioner and the 2nd Respondent. Accordingly we direct the Petitioner and Respondent No.2 each to deposit costs of Rs.10,000/- (Rupees Ten Thousand only) within two weeks from today with the Children's

Aid Society, Mumbai, who in turn shall transfer the said costs, for betterment of the children, to the New & Additional Children's Home, Mankhurd, Mumbai.

14 For the reasons stated herein above, the Writ Petition is allowed in terms of prayer clause (b) which reads thus :-

(b) That this Hon'ble Court be pleased to issue appropriate writ, order and direction for quashing of the FIR No.82 of 2015 for offences punishable U/s. 420, 465, 467, 468, 471 r/w 34 of I.P.C. registered with Pydhonie Police Station at the behest of the Respondent No.2 and filing of charge-sheet vide C.C. No.534/PW/2017 pending before Ld. Addl. C.M.M., 2nd Court at Mazgaon, Mumbai on such terms and conditions as this Hon'ble Court may deem fit and proper."

15 As directed herein above, within two weeks from today, both the Petitioner and Respondent No.2 shall deposit their respective costs in the Bank of Children's Aid Society, Mumbai details of which are as under:-

Name of Bank of Account : Children Aid Soc Donation
Bank Account No. :02370100005612
Bank Name : UCO Bank
Branch : Matunga Mumbai
IFS Code : UCBA0000237

16 On deposit of aforesaid costs by the Petitioner and the Respondent No.2 in the aforesaid bank account, the Children Aid Society, Mumbai shall

immediately transfer the said amount of costs for betterment of the children to the New and Additional Children's Home, Mankhurd, Mumbai. Payment of aforesaid costs is a condition precedent for allowing this Criminal Writ Petition and this order will take effect after depositing the costs amount by both parties.

17 We make it clear that, the proceedings are strictly restricted to quashing of the impugned FIR/chargesheet, and nothing to do with the dispute of title, ownership and possession, if any, pending in the court or any other forum.

18 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly. List the Petition under caption "For Compliance" of deposit of costs on 21st September 2021.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]