

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1594 OF 2021

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

Versus

**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 finally 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 MECR No.5 of 2019 (FIR No.213/2019) for the commission of offences punishable U/s. 420, 465, 467, 468, 471 r/w 120(b) of I.P.C. registered with L.T. Police Station at the behest of the Respondent No.2 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 also the case of the Petitioner that there are 37 tenants in the said building. One Mrs. Zulekha Gulzarali Sayed was one of the tenants in the said building. She was monthly tenant in respect of Room No.28 which is at third floor of the said building since 21/05/2004. The said Zulekha Gulzarilal Sayed was in arrears of monthly rent since 01/04/2005 to 30/04/2012 which comes approximately to Rs.38,296/-. The complainant came to know that the said Zulekha Sayed was no longer in occupation and possession of the said tenement and that she had without the permission or consent of the complainant, sublet the said tenement to the Petitioner. The Respondent N.2/Complainant therefore filed Eviction Suit in the small causes Court against the Petitioner and the said Zulekha Sayed. It is the case of the Petitioner that

various false, forged and fabricated documents purportedly signed by Mrs. Zulekha Sayed were filed in the said Suit. Respondent No.2 therefore filed a private complaint before the learned Metropolitan Magistrate, 28th Court, Esplanade vide No.65/2019 for commission of offences punishable u/s. 420, 465, 467, 468, 471 r/w 120-B of the Indian Penal Code and, the learned Metropolitan Magistrate passed an order of investigation under Section 156(3) of the Criminal Procedure Code. On the basis of the aforesaid allegations, the Respondent No.2 lodged a MECR No.5/2019 (FIR No.213/2019) dated 16/07/2019 against the Petitioner and others for commission of offences punishable under Sections 420, 465, 468, 471 of the Indian Penal Code.

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 in view of filing of consent terms dated 17/03/2020 in RAE Suit No.970/2012 which is pending before the Small Causes Court, Mumbai. It is also submitted that the Petitioner has handed over peaceful and vacant possession of the disputed premises to the Respondent No.2. It is also submitted that after filing of the said consent terms the Respondent No.2 has assured that he would withdraw all the civil and criminal litigations filed by the Respondent No.2 against the petitioner.

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 and entered into Consent Terms dated 17/03/2020. It is further submitted that in view of the said Consent Terms, the 2nd Respondent does not wish to pursue any civil and/or criminal proceedings and the 2nd Respondent has no more grievances against the Petitioner. It is submitted that the Petitioner has filed the present Writ Petition for quashing the impugned FIR registered 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 the Consent Terms 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.

7 The 2nd Respondent has filed his affidavit dated 16/03/2021 which is annexed to the Paper Book. In paragraphs 1 to 10 of the said Affidavit, the 2nd Respondent has stated thus :-

“1 That on my complaint M.E.C.R. No.05 of 2019 (FIR No.213/2019) dated 16/07/2019 registered at L. T. Marg Police Station for commission of offences punishable U/s. 420, 465, 467, 468 and 471 r/w 120(b) of the IPC

against the Petitioner herein and others.

- 2 That I had filed RAE Suit No.970 of 2012 before the Id. Small Causes Court, Dhobi Talao, Mumbai against the Petitioner and another. It is significant to note that during the pendency of said RAE Suit No.970 of 2012 before the Id. Small Causes Court No.17, joint consent terms dated 17/03/2020 came to be filed by myself and the Petitioner herein, whereby the Petitioner has resolved the issues concerning the said Suit in accordance with the terms and conditions as mentioned in the said consent terms. Pursuant to which said RAE Suit No.970 of 2012 was disposed off on 17/03/2020. The copy of the said consent terms dated 17/03/2020 is annexed herewith and marked as Exhibit "A". Hence, the issues/disputes concerning said RAE Suit have been amicably settled between myself and the Petitioner voluntarily, equitably amicably.
- 3 That as in 2017, when I came to know that the documents which are purportedly filed by one Mrs. Zulekha G Sayed Defendant No.1 in said suit inspite of the fact she never appeared in the matter. That Petitioner or any fictitious person have signed the said documents, hence I filed police complaint dated 14/08/2018. Thereafter, on 12/04/2019 I had filed private complaint before Id. M. M. 28th Court vide No.65/2019 for commission of offences punishable u/s. 420, 465, 467, 468, 471 and 120-B wherein the Id. Magistrate passed an order of investigation U/s. 156(3). Pursuant to which,

on 16/07/2019 the L. T. Marg Police station has registered MECR No.5/2019 (FIR No.213/2019) against the Petitioner and others.

- 4 That said MECR No.5/2019 (FIR No.213/2019) registered by L. T. Marg police Station, Mumbai is concerning subject matter of said RAE Suit No.970 of 2012, which was amicably settled. Hence, I am withdrawing all allegations against the Petitioner concerning MECR No.5/2019 (FIR No.213/2019) and have no grievances of whatsoever nature against the Petitioner.
- 5 That I am no longer interested in continuing with the criminal prosecution against the Accused named in aforesaid M.E.C.R. No.05 of 2019 which was initiated at my behest.
- 6 That in view of aforesaid settlement and filing of consent term before the Ld. Small Causes Court, all the allegations against the Petitioner shall stand as withdrawn and I have no grievances of whatsoever nature against Petitioner.
- 7 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. It is further agreed that we are bound by said Consent Terms which was presented before the Ld. Small

Causes Court, Dhobi Talao, Mumbai.

- 8 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.
- 9 In the above facts and circumstances, I pray that the Writ Petition be allowed and the criminal proceedings being MECR No.05 of 2019 (FIR No.213/2019) fro commission of offences punishable U/s. 420, 465, 467, 468 and 471 r/w 120(b) of IPC against the Accused lodged at L. T. Marg Police Station, Mumbai may be quashed and set aside.
- 10 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.1534 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 investigation in the impugned FIR filed by Respondent No.2 against the Petitioner.

10 We have carefully perused the material placed on record including the consent terms arrived at 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 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 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

1 2012 (10) SCC 303

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.

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 investigation in impugned FIR 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 lodged 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 MECR No.5 of 2019 (FIR No.213/2019) for the commission of offences punishable U/s. 420, 465, 467, 468, 471 r/w 120(b) of I.P.C. registered with L.T. Police Station at the behest of the Respondent No.2 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]