

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.420 OF 2021

- | | | |
|---|---|------------------------|
| 1. Amir Sartaj Khan |] | |
| |] | |
| 2. Mohammed Nadim Mohd. Sartaj Khan, |] | |
| Both R/at 505, Building No.1-A, |] | |
| Monarch & Qureshi Building, Veera |] | |
| Desai Road Extension, Behrambaug, |] | |
| Andheri (West), Mumbai – 400 053. |] | ... Petitioners |

Versus

- | | | |
|-------------------------------------|---|-----------------------|
| 1. The State of Maharashtra, |] | |
| [Through the Senior Inspector of |] | |
| Police, Paydoni Police Station, |] | |
| Mumbai.] |] | |
| 2. Afzal Usman Bijal |] | |
| Having address at Room No.25/2502, |] | |
| Darul-Mahdood, Nagpada, Mumbai – |] | |
| 400 003. |] | .. Respondents |

Ms. Tahera Qureshi with Ms. Minaz Khan for the petitioners.

Mr. Deepak Thakare, Public Prosecutor for respondent-State.

Mr. Husen Shaikh with Mr. Roman Shaikh and Ms. Ridhi Joshi for respondent No.2.

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

DATED : 11TH FEBRUARY, 2021.

ORAL JUDGMENT (PER S.S. SHINDE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. Learned counsel appearing for the petitioners and respondent No.2 submits that parties have amicably settled the dispute and respondent No.2 has filed the affidavit. The parties are identified by their respective counsels.

3. Paras 3 to 10 of the affidavit of respondent No.2 are reproduced herein below.

“3. I say that I am the original Complainant in the FIR registered against the Petitioners at Pydhoni Police Station as C.R.No.08/2021 on 06.01.2021, for offences punishable u/s 420, 408, 465, 468, 471, of I.P.C.

4. I say that the Petitioners and I belong to the same Business field and were of the view that the said dispute between the parties should not be allowed to get aggravated any further and the misunderstandings between us should be amicably resolved amongst ourselves.

5. I say that Petitioner No.2 and I had settlement talks and it was decided to resolve the said misunderstandings and disputes between the parties in a peaceful and amicable manner as the Petitioners are ready and willing to repay me, and there was no major dispute between them. Thereafter continuation of such criminal cases would lead to rift between the parties and would spoil the peaceful relation

and create unnecessary tension. It was thus felt necessary that the entire matter be resolved peacefully between the me and Petitioners so that the precious time of the Judiciary be saved.

6. I say that therefore I realized that pursuing the said Complaint/FIR against the Petitioners is nothing but the waste of precious time of Judiciary and 2nd Respondent. The 2nd Respondent has therefore agreed to resolve the matter amicably and has decided not to pursue to the said F.I.R. lodged against the Petitioners.

7. I say that 1st Petitioner is behind bar, so me and 2nd Petitioner has entered into memorandum of Understanding dated -.01.2021, wherein the 2nd Petitioner has taken the responsibility of the 1st Petitioner and on the day of execution of said MOU the Petitioners had paid Rs.2 lakhs in cash to me, which I received and acknowledged, and amount of Rs.3,11,000/- three lakhs eleven thousand, will be given to me at the time of withdrawal of present FIR before this Hon'ble Court.

8. I have also agreed not to take any further action against the Petitioners in pursuance to the said FIR lodged against them and I am ready for quashing of the said F.I.R. with my consent in order to maintain peace and saving the precious time of the Courts.

9. I hereby give my full and absolute consent and No-Objection for quashing the said F.I.R. registered by me at

Phydoni Police Station being C.R.No.08/2021 on 06.01.2021, for offences punishable u/s 420, 408, 465, 468, 471 of I.P.C. and I pray that the accused person arrested in the said case be released and/or discharged immediately in the interest of justice.

10. I therefore pray that the above Writ Petition be allowed in terms of prayer clause (a) and this Hon'ble Court be pleased to quash the F.I.R. registered by me at Phydoni Police Station being C.R.No.08/2021 on 06.01.2021, for offences punishable u/s 420, 408, 465, 468, 471 of I.P.C. and all consequential actions/proceedings initiated by the Phydoni Police in connection thereof, in the interest of justice."

4. In order to find out whether it is voluntary act of respondent No.2 to enter into such settlement and give consent for quashing the FIR, we have interacted with the second respondent, who is present in the Court. Respondent No.2 stated that it is voluntary act to enter into such settlement and give consent for quashing the FIR.

5. We have carefully perused the pleadings and the grounds stated in the petition and also affidavit filed by respondent No.2. We have noticed that the petitioners have given Rs.2,00,000/- in cash to respondent No.2. We are not aware whether the said amount is reflected in the income tax returns of the petitioners or respondent No.2. In that view of the matter, petitioners and respondent No.2 are legally obliged to show the said amount in their

income tax returns for the concerned financial year. In that respect, we cannot approve such transaction in cash and handing over such cash and its acceptance is at the risk of the parties. Today, learned counsel appearing for the petitioners handed over Demand Draft of Rs.3,11,000/- to the learned counsel appearing for respondent No.2, who in turn handed over the same to respondent No.2, who is present in Court.

6. The Hon'ble Supreme Court in the case of *Gian Singh v. State of Punjab & Anr.*¹ has held that the criminal cases having overwhelmingly and predominately 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 offences 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 has also held that 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.

¹ (2012) 10 SCC 303

7. Since the parties have amicably settled the dispute, we are inclined to allow this writ petition as respondent No.2 is not going to support the allegations in the impugned FIR and chances of conviction of the petitioners would be bleak and, therefore, continuation of further proceedings arising out of the said FIR, would be an exercise in futility.

8. In that view of the matter, to secure the ends of justice and to prevent the abuse of the process of the Court, the petition deserves to be allowed and the FIR is required to be quashed.

9. The writ petition is allowed. Rule is made absolute in terms of prayer clause (a), subject to petitioners' depositing costs of Rs.10,000/- (Rs.Ten Thousand only), within two weeks from today, in the account of Juvenile Justice Fund, details of which are as under :.

Name of Account Holder for Juvenile Justice 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

10. The writ petition stands disposed of accordingly.

11. Parties to act upon an ordinary copy duly certified by the Sheristedar of this Court.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)