

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.148 OF 2016

Mohankumar Virchand Jain .. Applicant

v/s.

The State of Maharashtra & Anr. .. Respondents

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Mrs. Mrunmayee Kulkarni, a/w. Ms. Kavisha Shah and Ms. Minal Pawar, i/b. India Law Alliance, for the Applicant.

Mrs. M.H. Mhatre, APP, for State.

Mr. Sumit Krishna Kumar Tiwari, i/b. Mr. Milan Heballi, for Respondent No.2.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 27 OCTOBER 2021.

P.C:-

This application is filed under Section 482 of the Code of Criminal Procedure for quashing FIR No.236 of 2015 registered by the Gamdevi Police Station, Mumbai.

2. Respondent No.2 filed this FIR on 27 November 2015 stating briefly as follows. That Respondent No.2 is a Director of a Packaging Company. Respondent No.2 and the Applicant developed friendly relations, and based on these friendly relations, Respondent

No.2 parted with Rs.1,72,00,017/- on the promise made by the Applicant that he will return the money or supply the goods. Since both things were not done, the FIR was lodged under Sections 406, 420, 120B and Section 34 against the Applicant and others. The others being wife, son and daughters of the Applicant.

3. The criminal application was initially filed challenging the FIR on merits. During the pendency of the application, the parties have settled their dispute, as has been informed to us by the learned Counsel for the parties. Charge-sheet has been filed and the parties entered into consent terms before the 40th Metropolitan Magistrate, Girgaon on 2 March 2020. Under these consent terms, the Applicant agreed to repay the amount as per the schedule specified therein. It was also agreed that if the Applicant fails to pay the agreed amount of Rs.2,00,00,000/- before 28 February 2020, Respondent No.2 will be entitled to forfeit the entire amount received and withdraw the consent for quashing the proceedings and payment of interest was also agreed upon. As it transpired, the Applicant, according to Respondent No.2, defaulted on his promise and Respondent No.2 sought to withdraw the consent for quashing.

4. The matter appeared on board yesterday, i.e. on 26 October 2021, when the learned Counsel for the parties stated that they will make an attempt to resolve the dispute again. The parties were present in Court and they jointly mentioned the matter before the

Court rising and stated that they have arrived at a mutually acceptable amount, which the Applicant will pay on a particular date and dispute can be put to an end. Hence, the matter was placed today.

5. The parties have tendered their consent terms and they have been signed by the Applicant and Respondent No.2, as identified by the concerned Advocates. The settlement reads thus:-

1. *The aforesaid matter is filed by the Applicant for quashing FIR bearing No. 236 of 2015 registered by the Gamdevi Police Station on the basis of the Complaint filed by Respondent No.2 herein along with the final report i.e. charge sheet.*
2. *During the pendency of present Application, negotiations took place between the parties herein to amicably settle the dispute in respect of all their claims against each other for the full and final settlement amount of Rs.2,00,00,000/-.*
3. *Pursuant to the negotiations and the mutual understanding between the Applicant and Respondent No.2, the parties hereto filed the Consent Terms dated 2 March 2020 before the Hon'ble Trial Court i.e. 40th Metropolitan Magistrate Court, Girgaon in case bearing No. 343 of 2019 for full and final settlement amount of Rs. 2,00,00,000/-, which was to be paid by the Applicant to the Respondent as per the terms mentioned in the said Consent Terms, i.e. 28 February 2020.*
4. *The Parties hereto state and confirm that the Parties owing the current pandemic situation the aforementioned date for repayment had been extended up to 31 August 2021.*
5. *In consonance with the Consent Terms dated 2 March 2020, the Accused have paid full amount of Rs. 2,00,00,000/- to Respondent No.2. The details of the payments made by the Applicant to Respondent No.2, which is hereby acknowledged by Respondent No.2 are as under:-*

<i>Date</i>	<i>Account</i>	<i>Bank Name</i>	<i>Account No.</i>	<i>Amount</i>
19.06.2020	Shankheshwar Industries	ICICI Bank Ltd	356605000933	3,00,000/-
07.07.2020	Shankheshwar Industries	ICICI Bank Ltd	356605000933	2,00,000/-
24.09.2020	Shankheshwar Industries	ICICI Bank Ltd	356605000933	5,00,000/-
21.12.2020	Shankheshwar Industries	ICICI Bank Ltd	356605000933	2,00,000/-
28.01.2021	Shankheshwar Industries	ICICI Bank Ltd	356605000933	3,00,000/-
27.02.2021	Shankheshwar Industries	ICICI Bank Ltd	356605000933	2,00,000/-
	Received Directly from Court			1,24,85,883/-
12.03.2021	Shankheshwar Industries	ICICI Bank Ltd	356605000933	14,117/-
30.07.2021	Shankheshwar Industries	Bombay Mercantile Co-op Bank Ltd	10110100003028	3,00,000/-
27.08.2021	Shankheshwar Industries	Bombay Mercantile Co-op Bank Ltd	10110100003028	20,00,000/-
08.09.2021	Shankheshwar Industries	Bombay Mercantile Co-op Bank Ltd	10110100003028	10,00,000/-
14.09.2021	Shankheshwar Industries	Bombay Mercantile Co-op Bank Ltd	356605000933	20,00,000/-
16.09.2021	Shankheshwar Industries	Bombay Mercantile Co-op Bank Ltd	356605000933	5,00,000/-
TOTAL PAID AS ON 16 September 2021				2,00,00,000/-

6. *However, in view of the delay in making payments by the Applicant to Respondent No.2, it has now been agreed confirmed and settled between the Parties that the Applicant shall pay a sum Rs. 10,50,000/- (Rupees Ten Lakhs Fifty Only) to Respondent No.2 as interest for the delayed payment and as full and final settlement between the Parties.*
7. *It is agreed, recorded and declared that the sum of Rs. 10,50,000/- shall be paid by Applicant to Respondent No.2 vide a Cheque dated 15 November 2021 bearing No. 000258 in his favour and only upon realization of the said Cheque or receipt of the amount of Rs.10,50,000/-, whichever is earlier the aforesaid FIR shall be quashed by consent of both parties against all Accused in the aforesaid FIR.*
8. *Agreed, recorded and declared that in the event, the Applicant makes a transfer of Rs. 10,50,000/- to Respondent No.2 vide RTGS/ NEFT before the realization of the aforesaid cheque, Respondent No.2 shall immediately return the said cheque back to the Applicant.*
9. *Agreed, recorded and declared that Respondent No.2 shall withdraw Commercial Suit No. 1157 of 2018 filed and pending before this Hon'ble Court against the Applicant herein on receipt of full and final payment.*
10. *Agreed, recorded and declared that the Applicant herein shall withdraw Suit No. 2653 of 2015 filed and pending before this Bombay City Civil Court at Mumbai against Respondent No.2.*
11. *Agreed, recorded and declared that the Applicant and Respondent No.2 neither themselves or any person acting through them shall file any civil and criminal proceedings in any/all the Courts of Law, Forum and or Authorities throughout India, in respect of the subject dispute mentioned in the aforesaid matter only on successful completion of settlement and receipt of payment, without any default.*
12. *Agreed, recorded and declared that on execution of these presents and filing the same before this Hon'ble Court, Respondent No.2 shall file an Affidavit in the Hon'ble High Court, Bombay in the*

captioned matter placing on record the Consent Terms and recording the settlement arrived between the parties.

13. *Agreed, recorded and declared that in the event the Applicant fails to pay the agreed amount of Rs. 10,50,000/- on or before 15 November 2021 as mentioned in clause 6 hereinabove then, Respondent No.2 herein shall withdraw his consent for quashing the current criminal proceedings and all the pending proceedings in civil court and criminal court, shall proceed further in regard to the transaction which is the subject matter of the case.*

6. It is trite that merely because parties have agreed, automatically an FIR cannot be quashed, if any cognizable offence is made out. However, the Apex Court, in the case of *Gian Singh vs. State of Punjab And Another*¹, has laid down that in certain cases Court may exercise its inherent jurisdiction to quash the FIR, one of them being a private commercial dispute. The learned Counsel for the parties agree and we also note from the FIR that the dispute is arising out of a commercial transaction between the parties and does not have an impact on the society in general. Therefore, this case falls within the parameters laid down by the Apex Court in the case of *Gian Singh*.

7. The learned Counsel for Respondent No.2 points out that the cheque given by the Applicant is post-dated, being of 15 November 2021, and the order passed today is subject to realization of the said amount. The learned Counsel for the Applicant also accepts and states that as the order is passed subject to the realization of the

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amount, the Applicant will make the payment by RTGS/NEFT before the scheduled date. The cheque is handed over to Respondent No.2 in the Court.

8. The learned APP states that this being a commercial transaction and that machinery of the State was engaged in needless investigation, the parties should be put to certain costs. This request made is reasonable. Both the Applicant and Respondent No.2 shall pay Rs.25,000/- each to the Maharashtra Legal Services Authority.

9. Thus, subject to realization of the amount in the cheque for payment by RTGS/NEFT of the amount of Rs.10,50,000/-, and the costs, the application is allowed in terms of prayer clause (a). The receipt of payment of costs be lodged with the Registry. At the joint request, list the matter under the caption "For Compliance" on 17 November 2021.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)