

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

CRIMINAL WRIT PETITION NO. 791 OF 2021

Mr. Rahul Yadav
Adult Indian Inhabitant, aged 30 years,
residing at A/1403-04, Quantum Park,
Union Park, Pali Hill, Bandra West,
Mumbai- 400052.

...PETITIONER

Versus

1. The State of Maharashtra
Through BKC Cyber Police Station.
2. Anarock Property Consultants Pvt. Ltd.
Through Mr. Karma Bhutia
1002, 10th Floor, B- Wingh, One BKC,
BKC, Bnadra (E), Mumbai- 400 051.

...RESPONDENTS

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Mr. Mukesh Gupta for Petitioner.
Mr. Kunal Phoole for Respondent No. 2.
Mr. Deepak Thakre a/w. Mr. J P Yagnik, APP for State.
Respondent No. 2 is present in the Court.

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

DATE : 23rd FEBRUARY, 2021.

ORAL JUDGMENT [PER MANISH PITALE J.]

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

2. By this petition under article 226 of Constitution of India, the petitioner is seeking quashing of FIR bearing No. 9/2020 dated 10th April 2020 registered with BKC Cyber Police Station, Mumbai for the offences punishable under Section 43, A,B, F and 66 of Information Technology Act, 2008. The respondent no. 2 is the original complainant and it is submitted on behalf of petitioner that the dispute between the parties is now settled and that Respondent No. 2 is agreeable to prayers in this writ petition being granted.

3. The Petitioner is accused no. 1 in the aforesaid FIR, wherein there are total two accused persons. The allegations in brief against the petitioner appears to be that he is an ex-employee of Respondent No. 2-company. He had allegedly retained data excess to the software concerned. There was a civil proceedings also initiated by the Petitioner in the form of commercial suit before this Court. But, since both the parties have settled their *inter se* dispute amicably the aforesaid suit also stood withdrawn on 17.12.2020.

4. When this petition was called upon for hearing, Respondent No. 2 was represented through his counsel. An affidavit on behalf of Respondent No. 2 sworn by its authorized signatory i.e. Senior Manager Legal was

tendered across the bar. The relevant paragraphs of the said affidavit read as under:-

1. *I say that I am duly authorized by the Respondent No. 2 vide its board resolution dated 18th December, 2020 to execute this Affidavit of consent for quashing the FIR No. 9/2020 dated 10th April 2020 registered with BKC Cyber Police Station, Mumbai for the offence punishable u/s 43 A, B, F, and 66 of Information Technology Act, 2008. I further say that vide the aforesaid board resolution I have been now appoint to be authorized representative with respect of the aforesaid FIR and that I am competent and duly authorized to execute this consent affidavit.*
2. *I say that the dispute between Respondent No. 2 and the Petitioner has been settled amicably.*
3. *I say that I am aware of the fact that the present Petitioner have preferred the aforementioned petition for quashing of the pending criminal proceedings before this Hon'ble Court under Article 226 of the Constitution of India.*
4. *I further say that in furtherance of the amicable settlement between Respondent No. 2 and the present Petitioner, Respondent No. 2 have no objection if FIR bearing No. 9/2020 dated 10th April 2020 registered with BKC Cyber Police Station, Mumbai for the offence punishable u/s 43 A, B, F, and 66 of Information Technology Act, 2008 and any proceeding arising thereof is quashed and set aside by this Hon'ble Court.*
5. *I say that I on behalf of Respondent No. 2 am filing this affidavit on my own free will and based on the instruction received from the Respondent No. 2 (Company) thereby authorizing me vide board resolution dated 18th December 2020 to give complete consent to the prayers made by the present Petitioner*

in their aforementioned petition for quashing of the FIR bearing No. 9/2020 dated 10th April 2020 registered with BKC Cyber Police Station, Mumbai for the offence punishable u/s 43 A, B, F, and 66 of Information Technology Act, 2008 against the Petitioner without any force or coercion.

5. On the basis of said affidavit, it was submitted by learned counsel for the Petitioner and Respondent No. 2 that in view of settlement between the parties, the FIR may be quashed qua the present petitioner.

6. 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

¹ 2012 (10) SCC 303

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.

7. Applying ratio of aforesaid judgment of the Hon'ble Supreme Court in the facts of the present case, it becomes evident that this is a fit case for exercising jurisdiction by this Court for quashing the impugned FIR qua the present petitioner. The dispute between the parties appears to be essentially of commercial nature and the parties have amicably settled the said dispute. Therefore, there is very little chance of Respondent No. 2 to pursue the matter and proceeding initiated in view of impugned FIR reaching to any conclusion against the present petitioner. Therefore, the writ petition deserves to be allowed.

8. At the same time, we are of the opinion that the writ petition ought to be allowed conditionally, on the petitioner depositing amount towards a noble cause. Therefore, the writ petition is allowed in terms of prayer clause (a), which reads as under:-

a. This Hon'ble Court be pleased to quash the FIR bearing no. 9/2020 dated 10th April 2020

registered with BKC Cyber Police Station, Mumbai for the offence punishable u/s 43 A, B, F and 66 of Information and Technology Act, 2008 registered at the instance of Respondent No. 2 and any further proceedings arising thereof.

9. It is made clear that the said FIR stands quashed only in respect of Petitioner before this Court, subject to depositing an amount of Rs. 50,000/- (Rupees Fifty Thousand), in the following account, within two weeks from today.

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

10. We direct the Children Aid Society, Mumbai to report about the actual utilization of such amount to Mr. Prashant C. Kale (Deputy Registrar, Legal & Research, High Court of Bombay).

11. It is made clear that the aforesaid order will take effect upon satisfying the aforesaid condition of depositing cost by the Petitioner within the stipulated period of time.

12. We are informed that a laptop pertaining to Respondent No. 2-Company was retained during the course of investigation. In consequence of quashing of impugned FIR qua the present petitioner, the laptop may be returned to Respondent No. 2-Company.

13. List the matter under the caption 'For Compliance' on 17.03.2021.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)