

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1014 OF 2021

- 1] Vishal Ramdas Kale, S/o Ramdas Kale]
Age – 30 years, occupation – Business]
R/o Sector No.16A, Nerul, Navi Mumbai]
Maharashtra, India]
]
- 2] Mohammad Asad Mohammad Ibrahim Ali]
Age – 45 years, Occupation – Business]
R/o B-Bless Building, B-Wing]
Room No.301, Plot No.4, Sector-9]
Ulve, Navi Mumbai]
]
- 3] Sandeep @ Sunny Kartar Singh]
Age – 30 Years, Occupation – Business]
R/o Room No.203, Gangajal Apartment]
Plot No.114, Sector – 9, Ulve]
Panvel, Raigad.]
]
- 4] Mr. Vasant Raja Ganeshan]
Age – 27 Years, Occupation – Real Estate,]
R/o. Room No.603, Plot No.27, Solitar Building]
6th Floor, Sector – 21, Ulve, Panvel]
]
- 5] Mr. Acharya Rajgopal Natrajan]
Age – 40 Years, occupation-Service-Delivery boy]
R/o Janata Market, Gala No.5/6]
Plot No.25, Sector-9, Ulve, Panvel, Raigad]
]
- 6] Mr. Tanveer Yusuf Shaikh]
Age – 29 years, Occupation – Office boy/Service]
R/o. Room No.401, Plot No.66,]
Neelima Patil Apartment, Sector – 19]
Ulve, Panvel, Raigad]
]
- 7] Smt. Pooja Raju Sharma]
Age – 36 years, Occupation – Business]
R/o. B/301, Third Floor, Plot No.4]
Sector 9, Ulve, Navi Mumbai]
]

8] Mrs. Bhavna Sansiya @ Swati]
 Age – 25 Years, occupation – Service]
 R/o. 306, Yamuna Villa C. H. S. Plot No.42]
 43, Near New Talav, Sector 19,].....Petitioners/
 Koparkhairna, Navi Mumbai.] Original Accused

versus

1] The State of Maharashtra]
 Through – the Inspector in charge, Vashi Police]
 Station, to be served through the Public]
 Prosecutor, High Court, Mumbai]
]
 2] Mr. Bharat Pawan Goyal]
 Aged about 33 years,]
 Occupation Business]
 Shop No.19, R J Corner]
 Sector No.17, Vashi,]
 Navi Mumbai, Mumbai]..... Respondents.

Mr. Vikram R Sutaria for the Petitioners.
 Smt. A S Pai, APP for the Respondent No.1/State.
 Ms. Keral Mehta for Respondent No.2.
 Respondent No.2 present in Court.

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

Reserved On : 09th MARCH 2021
 Pronounced on : 15th MARCH 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 This Writ Petition has been filed by the Petitioners for the
 following substantial relief :-

“(a) That this Hon’ble Court be pleased to issue appropriate writ, order and direction directing the quashing of the FIR bearing C.R. No.7/2021 registered with Vashi Police Station dated 8/01/2021 registered at the instance of Respondent No.2 under the provision of section 141, 143, 147, 149, 323, 504, 506, 427, 452, 392 of the Indian Penal Code, 1860 on such terms as this Hon’ble Court may deem fit and proper.”

3 The 2nd Respondent herein has lodged FIR bearing C R No.7/2021 registered with Vashi Police Station, Navi Mumbai for the offences punishable under Sections 141, 143, 147, 149, 323, 504, 506, 427, 452 and 392 of the Indian Penal Code. It is submitted by the learned counsel appearing for the Petitioners that Respondent No.2 and his younger brother Hemant Goyal are running a business of tire selling since the year 2007 under the name “Agarwal Tires” at Shop No.19, Sector 17, Vashi, Navi Mumbai. Petitioner No.1 is the old friend of Respondent No.1. The Petitioners and Respondent No.2 know each other. It is the allegation of Respondent No.2 in the said FIR that Petitioner Nos. 1 and 2 went to shop of Respondent No.2 on 06/01/2021 at 20.30 pm and started abusing him. The younger brother of Respondent No.2 told the Petitioners to go out of the shop and not to insult him. Thereafter on 07/01/2021 the Petitioners came on the road outside the shop in White Veto Car Number (MH-46-BV-4444) and started gesturing towards the shop of Respondent No.2 and saying something. Then they left. Again at around 20.15 pm, Petitioner Nos.1, 2, 7 and 8 along with 12 to 15 persons came to the shop

of Respondent No.2 in a red car and started abusing and beating Respondent No.2 with their fist blows. At that time he had Rs.3,70,000/- in his pocket which was collected/borrowed from customer. The said amount was forcibly taken away by Petitioner No.1 and his other accomplices. The said persons also damaged the shop of Respondent No.2 by picking up rods, jacks rims. On the basis of the aforesaid allegations, the 2nd Respondent, as stated herein above, has lodged the said FIR against the Petitioners.

4 It is submitted that thereafter the Petitioners came to be arrested and produced before the Ld. JMFC Court wherein the Respondent No.2 has shown his willingness not to proceed with the matter. Thereafter the Petitioner Nos.1 to 6 applied for bail and the Trial Court granted bail to the Petitioners. Petitioner Nos.7 and 8 were not arrested, however, they have attended the police station from time to time.

5 The learned counsel appearing for both the parties have submitted that now both the parties have realized that there is no sense in quarreling and therefore they entered into Compromise Deed on 13/02/2021 wherein the 2nd Respondent has shown his willingness to settle and give consent for quashing of the subject FIR and proceedings arising out of the said FIR. The copy of the said Compromise Deed is placed on record.

6 With the able assistance of the learned counsel appearing for both the parties, we have perused the recitals of the said Compromise Deed. The said Compromise Deed has been signed by the Petitioners and the 2d Respondent in the presence of two witness. It is a notarized document. The Petitioners have been shown as the First Part and the 2nd Respondent has been shown as the Second Part of the said Compromise Deed. The terms and conditions as settled between the parties are mentioned in the said Compromise Deed and the same are reproduced herein under :-

(A) That the Second Part herein agree not to pursue the FIR No.0007/2021 registered with Vashi Police Station and further help the First Party in quashing/withdrawing the criminal proceedings against the First Party and all the others Co-Accused.

(B) That the Second Party shall submit the copy of the present consent terms/deed of settlement/Compromise Deed to Vashi Police Station and intimate formally about his intention not to pursue the case further.

(C) That the Second Party undertakes to execute all documents which shall be helpful in quashing/withdrawing the criminal proceedings before the relevant courts of law against the First Party and all other accused named in the FIR.

(D) That on the execution of the present deed, the parties herein shall have absolutely no liabilities against each other and all disputes shall be deemed as settled between the parties to this deed.

(E) That the Party to First Part has already paid compensation to the satisfaction of the Party to First Part towards damages, if any caused, to the property during the alleged incident of the FIR.

(F) That both the parties that the present MOU has been executed without any coercion/undue influence and the both parties are competent to the enter into this MOU”.

From the perusal of the said Compromise Deed it is revealed that the Petitioners and Respondent No.2 have decided to settle the dispute elaborated in impugned FIR.

7 The 2nd Respondent was present before this Court on 09/03/2021 when the matter was heard. He was identified by his advocate. He stated that it is his voluntary act to settle the disputes and there is no coercion or undue influence or force upon him for arriving at the said settlement. In support of the said settlement, the 2nd Respondent has filed his affidavit in this Writ Petition which is taken on record. The 2nd Respondent, in paragraph Nos.1 to 5

of his affidavit, stated thus :-

- “1 I state that I am a First Informant and the FIR bearing C.R. No.7/2021 registered with Vashi Police Station, Navi Mumbai, for offences punishable u/ss. 141, 143, 147, 149, 323, 504, 506, 427, 452, 392 of the Indian Penal Code, 1860 lodged at my instnce.
- 2 I state that however disputes between the Petitioners and myself have been settled and I have entered into consent terms with Petitioners dated 13/02/2021.
- 3 I stated that without going into merits of the case, I have no objection if the subject FIR and proceedings thereon are quashed and set aside against the Petitioners.
- 4 I stated that I have gone through the copy of the petition and I agree with the fact that the above stated dispute is amicably settled between the Petitioners and myself and I have entered into consent terms with the Petitioners.
- 5 I have no objection if the proceedings arising out of FIR

bearing C.R. No.7/2021 investigated by Vashi Police Station, Navi Mumbai, is quashed and set aside.”

8 The learned counsel appearing for both the parties submit that both the parties have voluntarily agreed to settle the dispute and there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that both the parties have amicably resolved/settled the dispute and decided to seek quashing of impugned FIR by this Writ Petition. Both the parties have entered into the Compromise Deed. The 2nd Respondent has also filed the affidavit in support of the said settlement.

9 Upon perusal of the Chargesheet it is revealed that Section 392 has been deleted. As a corollary there can not be a trial for the offence punishable under Section 392 of the Indian Penal Code.

10 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 resolves their entire

1 2012 (10) SCC 303

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 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.

11 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further investigation and proceedings being FIR No.7 of 2021 registered with Vashi Police Station, Navi Mumbai on 08/01/2021 by the 2nd Respondent against the Petitioners for the offences punishable under Sections, 141, 143, 147, 149, 323, 504, 506, 427, 452 and 392 of the Indian Penal Code.

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 Petitioners in the impugned FIR, and further continuation of investigation and proceedings 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 made in the FIR, the chances of the conviction of the accused would be remote and bleak.

13 It is pertinent to note at this stage that though the parties have resolved/settled their dispute between them and approached this Court for quashing of the FIR lodged by the 2nd Respondent against the Petitioners, we deem it appropriate to impose costs of Rs.80,000/- (Rupees Eight Thousand only) collectively on the Petitioners i.e. each Petitioner shall individually contribute Rs.10,000/- (Rupees Ten Thousand only). Accordingly we direct the Petitioners to deposit costs of Rs.80,000/- (Rupees Eighty Thousand only) with the Children's Aid Society, Mumbai in the following manner. In turn the Children's Aid Society, Mumbai shall transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai.

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

14 For the reasons stated herein above, the Writ Petition is allowed in terms of prayer clause (a), subject to all the Petitioners collectively depositing Rs.80,000/- (Rupees Eighty Thousand only), which reads thus :-

“(a) That this Hon’ble Court be pleased to issue appropriate writ, order and direction directing the quashing of the FIR bearing C.R. No.7/2021 registered with Vashi Police Station dated 8/01/2021 registered at the instance of Respondent No.2 under the provision of section 141, 143, 147, 149, 323, 504, 506, 427, 452, 392 of the Indian Penal Code, 1860 on such terms as this Hon’ble Court may deem fit and proper.”

15 Costs to be deposited by all the Petitioners within three weeks from today. Payment of aforesaid costs is a condition precedence for allowing this Writ Petition and this order will take effect after depositing the amount of costs by the Petitioners.

16 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly. List the Petition on 07/04/2021 under caption “For Compliance” of deposit of costs.

[MANISH PITALE, J]

[S. S. SHINDE , J]