

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.239 OF 2019

- 1]

Subodh Subash Runwal
Age – 43 years
Having his registered office at
Runwal & Omkar E-Square, 5th Floor,
Off Eastern Expressway Highway
Opposite Sion Chunnabhatti Signal
Mumbai – 400022.

]
- 2]

Ms. Snehal Subodh Runwal
Age – 42 years
Having his registered office at
Runwal & Omkar E-Square, 5th Floor,
Off Eastern Expressway Highway
Opposite Sion Chunnabhatti Signal
Mumbai – 400022.

]
- 3]

Ms. Lucy Roy Choudhury
Age – 50 years
Having his registered office at
Runwal & Omkar E-Square, 5th Floor,
Off Eastern Expressway Highway
Opposite Sion Chunnabhatti Signal
Mumbai – 400022.

]
- 4]

Rameh P Lunkad
Age – 58 years
Having his registered office at
Runwal & Omkar E-Square, 5th Floor,
Off Eastern Expressway Highway
Opposite Sion Chunnabhatti Signal
Mumbai – 400022.

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- 5]

A. V. Rajan
Age – 59 years
Having his registered office at
Runwal & Omkar E-Square, 5th Floor,
Off Eastern Expressway Highway
Opposite Sion Chunnabhatti Signal
Mumbai – 400022.

]

6] Umesh Moresware Barve]
Age – 57 years]
Having his registered office at]
Runwal & Omkar E-Square, 5th Floor,]
Off Eastern Expressway Highway]
Opposite Sion Chunnabhatti Signal]
Mumbai – 400022.]..... Applicants.

Versus

1] The State of Maharashtra]
at the instance of Bhandup]
Police Station, in FIR No.07/2019]
2] Mangesh Suresh More]
Age 50 Years]
Residing at House No.9001,]
Building No.230,]
Kannamwar Nagar – 1, Vikhroli (East),]
Mumbai – 400 083]..... Respondents.

ALONG WITH
CRIMINAL INTERIM APPLICATION NO.1143 OF 2020
(For Intervention)
IN
CRIMINAL APPLICATION NO.239 OF 2019

Neeraj Rameshwar Jain]
Age 63 years]
Residing at Flat No.A/702, The Willows,]
Near Comfort Zone, Baner Balewadi Road]
Pune – 411 045.]..... Intervener/Applicant

In the matter between

1] Subodh Subash Runwal]
Age – 43 years]
Having his registered office at]
Runwal & Omkar E-Square, 5th Floor,]
Off Eastern Expressway Highway]
Opposite Sion Chunnabhatti Signal]
Mumbai – 400022.]

- 2] Ms. Snehal Subodh Runwal]
 Age – 42 years]
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- 3] Ms. Lucy Roy Choudhury]
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- Versus
- 1] The State of Maharashtra]
 at the instance of Bhandup]

Police Station, in FIR No.07/2019]
2] Mangesh Suresh More]
Age 50 Years]
Residing at House No.9001,]
Building No.230,]
Kannamwar Nagar – 1, Vikhroli (East),]
Mumbai – 400 083]..... Respondents.

Mr. Mihir Gheewala a/w Farhad Panthaki, Mr. Santosh Pawar and Mr. Aditya Mehta i/by Mr. Santosh Pawar for the Applicant in Criminal Application No.239 of 2019.

Mr. Yuvraj D Patil for Respondent No.2.

Mr. S R Shinde, APP for the Respondent-State.

None for the Applicant in Criminal IA No.1143 of 2020.

Mr. P D Wani, Police Inspector, now attached to Mulund Police Station was present.

CORAM : S. S. SHINDE,

MANISH PITALE, JJ

Reserved on : 17th FEBRUARY 2021

Pronounced on: 22nd FEBRUARY 2021

JUDGMENT : (PER S S SHINDE, J.)

1 Rule in Criminal Application No.239 of 2019. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2 The Criminal Application No.239 of 2019 has been filed by the Applicants for the following substantial reliefs :-

- a) That this Hon'ble Court be pleased to quash and set aside the said FIR being 7 of 2019 filed against the Applicants abovenamed by the Bhandup Police Station;
- b) That this Hon'ble Court be pleased to quash and set

aside the said Summons being summons dated 08th January 2019 bearing nos. 281/2019 and 282/2019 addressed by Respondent No.1 calling upon, inter alia, the Applicants herein to remain present at the police station at Bhandup with all the necessary documents.”

3 It is submitted that in the year 2010 Respondent No.2 approaches Runwal Homes Pvt. Ltd. for purchasing a flat in Runwal Greens Project. Respondent No.2 booked the flat. Allotment letter for Flat No.3501 is handed over by the company to Respondent No.2. Thereafter on 31/07/2012 Agreement for Sale has been executed between the Respondent No.2 and the Company. On 08/07/2012 the 2nd Respondent has been informed about the changes in DCR Regulation, however, the Respondent No.2 objected same by addressing a letter dated 27/07/2015. The Company replied to the said letter. Thereafter Respondent No.2 filed a Civil Suit being Suit No.2355 of 2015 before the Bombay City Civil Court at Bombay and also taken out a Notice of Motion No.2355 of 2015 wherein an order came to be passed directing the Company not to create third party rights. On 03/02/2017 the Company informs Respondent No.2 that the flat is ready for fit out. Thereafter certain litigation has taken place between the Respondent No.2 and the Company. On 03/02/2017 Respondent No.2 filed a complaint with the Bhandup Police Station and, on the basis of said compromise, FIR came to be registered against the Applicants for the offences punishable under Sections 3, 4, 7(i)(ii) and 8 of Maharashtra Ownership of Flats Act.

4 It is submitted that the Applicants and Respondent No.2 have decided to settle the dispute amicably and have arrived at out of court settlement and entered into Consent Terms dated 16/08/2019. 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 Applicants. It is submitted that the Applicants have filed the present Criminal Application No.239 of 2019 for quashing the impugned FIR and the summons dated 08/01/2019 bearing Nos.281/2019 and 282/2019 issued by Respondent No.1 against the Applicants.

5 This matter was on board on 17/02/2021. 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 Applicants and has no objection to quash and set aside the impugned FIR.

6 The 2nd Respondent has filed his affidavit dated 19/08/2019 in the Criminal Application No.239 of 2019 which is annexed to the Paper Book. In paragraphs 1 to 7 of the said Affidavit, the 2nd Respondent has stated thus :-

- “1 I say that I have filed an FIR being LAC 7 of 2019 with Bhandup Police Station for the offences under Section 3, 4, 7(i)(ii) and 8 of the Maharashtra Ownership of Flats Act against the Applicants herein. I say that this matter has now been transferred to Mulund Police Station.
- 2 I say that the Respondent No.1, 2, 5 and 6 have filed application for Anticipatory Bail before the Hon’ble Sessions Court being ABA No.254 of 2019 and ABA No.1243 of 2019.
- 3) I say that after due deliberations, discussions and negotiations between myself and the Applicants herein, we have decided to mutually and amicably settle our disputes, differences and grievances. I say that the Applicants and I have arrived at an out of court settlement and have entered into consent terms dated 16th August, 2019. I now intend to go on with my life and keep this chapter behind me. The construction of the project has now been completed and almost all the buyers have received occupation of their flats. I say that I have now received possession of my flat which is free from all encumbrances.
- 4) I say that I have filed Consent Terms between myself and Runwal Homes Private Limited (Propel Developers Private Limited) before the Hon’ble City Civil Court in Suit No.2355 of 2015 on 16th August, 2019. In light of the Consent Terms between myself and the Applicants herein being filed before the Hon’ble City Civil Court, I

do not wish to pursue any Civil and/or criminal proceedings and I have no more grievances against the Applicants.

- 5) I say that pursuant to the aforesaid settlement, I hold no grievances, grudges, or ill-will towards the Applicants herein. I say that I hereby withdraw all my allegations and charges against the Applicants herein which was made by me in C.R. No.7 of 2019 registered with Bhandup Police Station.
- 6) I say that I have no desire to pursue any prosecution against the Applicants herein. I further submits that I withdraw all allegations/complaints levelled against the Applicants herein before all forums and not limited to the FIR registered with Bhandup Police Station.
- 7) I submit that I am making this Affidavit voluntarily, without any force or coercion and give my consent for the quashing of the C.R. being 7 of 2019 registered with Bhandup Police Station and thus have no objection if the prayers as prayed in the Petition are allowed.

7 The learned counsel for both the parties submits 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.

8 In view of settlement arrived at between the parties, no fruitful purpose will be served by continuing the further investigation in the impugned FIR No.7 of 2019 filed by Respondent No.2 against the Applicants with Bhandup Police Station.

9 We have called for the status report in this Criminal Application No. 239 of 2019. When the matter was on board for hearing on 17/02/2021, the learned APP appearing for Respondent/State has tendered across the bar, status report dated 17/02/2021 sent by the Police Inspector Bhandup Police Station. The learned APP on instructions submitted that there are no antecedents against the Applicants.

10 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 resolves 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

1 2012 (10) SCC 303

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 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 Applicants 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 dispute is predominantly of civil nature.

12 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 Applicants, we deem it appropriate to impose costs of Rs.3,00,000/- (Rupees Three Lakhs only) on the Applicants. Accordingly we direct the Applicants to deposit costs

of Rs.3,00,000/- (Rupees Three Lakhs only) within two weeks from today with the Children's Aid Society, Mumbai, who in turn transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai.

13 For the reasons stated herein above, the Criminal Application No.239 of 2019 is allowed in terms of prayer clause (a) and (b) subject to depositing Rs.3,00,000/- (Rupees Three Lakhs only) by the Applicants within two weeks from today, which read thus :-

- a) That this Hon'ble Court be pleased to quash and set aside the said FIR being 7 of 2019 filed against the Applicants abovenamed by the Bhandup Police Station;
- b) That this Hon'ble Court be pleased to quash and set aside the said Summons being summons dated 08th January 2019 bearing nos. 281/2019 and 282/2019 addressed by Respondent No.1 calling upon, inter alia, the Applicants herein to remain present at the police station at B handup with all the necessary documents."

14 In so far as Criminal Interim Application No.1143 of 2020 is concerned, the same has been filed by Applicant/Intervener to allow him to oppose the Application for quashing the impugned FIR. In view of the disposal of the Criminal Application No.239 of 2019, nothing survives further for consideration in Criminal Interim Application No.1143 of 2020 and the same

to accordingly stand disposed of as such.

15 As directed herein above, within two weeks from today, the Applicants shall deposit Rs.3,00,000/- (Rupees Three Lakhs only) 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 costs of Rs.3,00,000/- (Rupees Three Lakhs only) by the Applicants 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 precedence for allowing this Criminal Application and this order will take effect after depositing the costs amount by both parties.

17 Rule is made absolute to the above extent and the Criminal Application stands disposed of accordingly. List the Petition under caption "For Compliance" for deposit of costs on 08/03/2021.

[MANISH PITALE, J]

[S. S. SHINDE , J]