

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1384 OF 2021

- 1] Abdul Ahad Khan]
Age 38 years]
Residing at : Room No.7,]
Shekhavat Mansion, 3rd Floor,]
Opp. Farooq High School]
Jogeshwari (West), Mumbai – 400 102]
]
- 2] Fahim Yasin Khan]
Age 57 years,]
Residing at : 3rd Floor, 17, Mistry House,]
S. V. Road, Opp. Farooq High School]
Jogeshwari (West), Mumbai 400 102]
]
- 3] Shaikh Mohammed Irfan]
Age 40 years,]
Residing at : Room No.2, Hausil Chawl,]
Sahakar Road, Opp. Kunj Niwas]
Jogeshwari (West), Mumbai 400 102]
]
- 4] Azim Solkar]
Age 51 years]
Residing at Can 65, (3) – J.S.Colony]
Taiyyabji Ali Road, Jogeshwari East]
Mumbai 400060.]
]
- 5] Mr. Mohammed Nadeem Ismail Shaikh]
Age 33 years]
Residing at : 606, Building No.3,]
Andheri United CHS, Rehab Cama Road]
Opp. Jamat Khana, Gaodevi Dongar,]
Andheri (West), Mumbai – 400058]
]
- 6] Mohammed Murtuza Mohammed Hussain]
Khan, Age 31 years]
Residing at : Room No.10, Anwar Chawal]
Scout Camp Road, Behram Baug,]
Near Masjid Arbia Jogeshwari West]
Mumbai 400102]
]

7] Abdul Wahid Abdul Qayyum Shaikh]
Age 47 years]
Residing at ; 1/A Fazal Khan Chawl]
J. Block, Janata Colony,]
Jogeshwari (East), Mumbai 400060]..... Petitioners.

Versus

1] The State of Maharashtra]
(At the instance of Oshiwara]
Police Station]
2] Swadeshkumar Swatantra Kumar Anand]
Aged 29 years, Occ : Builder]
Residing at 602, DLH Swakrut,]
Sahakar Nagar, Near H. P. Petrol Pump,]
D. N. Nagar, Andheri (W), Mumbai 400053]..... Respondents.

Mr. Rajendra Rathod a/w Mr. Rahul Dangle for the Petitioners.
Mr. Deepak Thakre, PP a/w Mr. S R Shinde, APP for the Respondent/State.
Mr. Ali Bubere for the Respondent No.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 16th March 2021
Pronounced on: 23rd 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 The Petitioners have filed this Writ Petition for the following
substantial relief :-

(a) This Hon'ble Court be pleased to quash the FIR bearing
No.70 of 2021 registered with Oshiwara Police Station
for offences punishable under Sections 141, 143, 145,

147, 148, 341, 452, 504, 506, 506(2) of IPC and the Petitioner be acquitted.”

3 It is submitted that Petitioner No.1 and Respondent No.2 herein are both in the business of real estate. The 2nd Respondent is one of the Directors of Gajanan Property Developers Pvt. Ltd. and the original complainant in CR No.70 of 2021. In or around May 2018 the Complainant and his company entered into a partnership with Petitioner No.1 herein for redevelopment of a property situated at Oshiwara. That on 15/02/2021 one Mr. Tushar Mehta who is the sales head of the said project got a call from one Mr. Fahim Khan who told him that the Petitioner herein has told not to start the site tomorrow and the Petitioner No.1 called the ground staff of the complainant and threatened him to keep the site closed tomorrow. Thereafter on 16/02/2021 the Petitioner No.1 and other persons on his behalf allegedly threatened the staff of the complainant and did not let them start the construction work and also threatened them with their life. Hence the present FIR No.70 of 2021 came to be filed with Oshiwara Police Station under Sections 141, 143, 145, 147, 148, 341, 452, 504, 506, 506(2) of the Indian Penal Code.

4 It is submitted that the Petitioners and the Respondent No.2 have agreed to settle the dispute amicably and to that effect filed consent terms before this Court. The said consent terms have been signed by the Petitioners

and the 2nd Respondent as also their respective advocates. The said Consent Terms are taken on record. The terms and conditions as set set out in the said Consent Terms read thus :-

- “1 The Petitioners and the Respondent No.2 have settled their dispute amicably and therefore the Respondent No.2 does not have any grievance against the Petitioners and the Respondent No.2 has agreed to withdraw the Complaint dated 16/02/2021 bearing CR No. 70 of 2021 registered with Oshiwara Polie Station for offences punishable u/s 141, 143, 145, 147, 148, 341, 452, 504, 506, 506(2) of the Indian Penal Code.
- 2 The Petitioners and the Respondent No.2 are approaching this Hon’ble Court under its inherent jurisdiction u/s. 482 of Cr. P. C. and the Respondent No.2 hereby gives consent and No Objection o this Hon’ble Court for quashing the F.I.R. bearing No.70 of 2021 dated 16/02/2021 registered with Oshiwara Police Station as the dispute is amicably settled between the Petitioners and the Respondent No.2 herein.
- 3 The Respondent No.2 states that he has no grievance against the Petitioners and the Respondent No.2 hereby withdraws all the complaints against the Petitioners with permission of this Hon’ble Court and the Petitioners states that they do not have any grievance against the Respondent No.2.

4 The Respondent No.2 and the Petitioners state that they will not pursue the said matter and the Petitioners and the Respondent No.2 will not have any claim of whatsoever nature against each other in respect of the Complaint dated 16/02/2021 bearing CR No.70 of 2021 registered with Oshiwara Police Station and both the parties will maintain peace and harmony at all times on the construction site and as the matter is amicably settled between the Petitioners and the Respondent No.2 as per these Consent Terms.

5 The Petitioners and the Respondent No.2 are entering into these Consent Terms for the purpose of filing the same in the above-mentioned Writ Petition before this Hon'ble Court for quashin of F.I.R. bearing No.70 of 2021 dated 16/02/2021 registered with Oshiwara Police Station.

5 This matter was on board on 16/03/2021. 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 has no grievance against the Petitioners and he does not wish to continue with the impugned FIR. He also stated that he has no objection for quashing the impugned FIR.

6 The 2nd Respondent has filed his affidavit in this Writ Petition.

which is taken on record. In paragraphs 1 to 6 of his affidavit, the 2nd Respondent has stated thus :-

- “1 I say that I am the original Complainant in the F.I.R. bearing No.70 of 2021 registered with Oshiwara Police Station against the Petitioners for offences punishable u/s 141, 143, 145, 147, 148, 341, 452, 504, 506, 506(2) of the Indian Penal Code.
- 2 I say that the dispute between me and the Petitioners has been settled amicably as on date and there is no grievance against each other.
- 3 I say that dispute between the Petitioners and the Respondent No.2 has been settled therefore the F.I.R. bearing No.70 of 2021 dated 16/02/2021 registered with Oshiwara Police Station against the Petitioners and the same may be quashed.
- 4 I say that I have no objection for quashing and setting aside of F.I.R. bearing No.70 of 2021 dated 16/02/2021 registered with Oshiwara Police Station as on date and thus the present Petition be allowed and the said FIR may be quashed.
- 5 I say that the dispute is settled between both the parties amicably and accordingly consent term dated ____/03/2021 are being signed by both the parties.

6 I say that I am giving this Affidavit willfully and without any kind of force or coercion as the matter has been amicably been settled between me and the Petitioners above named.”

7 The learned counsel for both the parties submit 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 F.I.R. bearing No.70 of 2021 dated 16/02/2021 registered with Oshiwara Police Station.

9 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

1 2012 (10) SCC 303

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.

10 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. The further continuation of proceedings of the impugned FIR would tantamount to abuse of the process of the Court, since the 2nd Respondent by way of filing her affidavit has clearly stated that, he is not interested to pursue the allegations made in the impugned FIR, and the chances of conviction of the Petitioner would be bleak and remote.

11 It is pertinent to note at this stage that though the parties herein 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.25,000/- (Rupees Twenty Five Thousand only) on the Petitioners and costs of RRs.25,000/- (Rupees Twenty Five Thousand only) on the 2nd Respondent. Accordingly we direct the Petitioners to collectively deposit costs of Rs.25,000/- (Rupees Twenty Five Thousand only) and the Respondent No.2 to deposit costs of Rs.25,000/- (Rupees Twenty Five Thousand only) with the Children's Aid Society, Mumbai within two weeks from today in the account number given herein below.

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

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.

12 For the reasons stated herein above, and in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the Writ Petition deserves to be allowed and the same is accordingly allowed in terms of prayer (a), subject to Petitioners depositing the costs as afore-stated, which read thus :-

(a) This Hon'ble Court be pleased to quash the FIR bearing

No.70 of 2021 registered with Oshiwara Police Station for offences punishable under Sections 141, 143, 145, 147, 148, 341, 452, 504, 506, 506(2) of IPC and the Petitioner be acquitted.”

13 The Petitioners and the Respondent No.2 shall deposit their respective costs within two 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 and the Respondent No.2.

14 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

15 The parties are directed to abide strictly by the mutual obligations as per the Consent Terms.

16 List the Petition on 15/04/2021 under caption “For Compliance” of deposit of costs.

[MANISH PITALE, J]

[S. S. SHINDE , J]