

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

CRIMINAL WRIT PETITION NO. 251 OF 2021

Harsh Umeshchandra Dubey

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. Piyush R. Toshnival for Petitioner.

Mr. V.B. Konde-Deshmukh, APP for State.

Mr. Amit Icham for Respondent No. 2.

Respondent No. 2 is present through VC.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 27th JULY, 2021.

ORAL JUDGMENT [PER N.J. JAMADAR, J.]:

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

2. This petition under article 226 of the Constitution of India and Section 482 Code of Criminal Procedure , 1973 ('the Code'), is filed for quashing and setting aside the FIR No. 133/2019 registered with Ichalkaranji Police Station, Ichalkaranji, for the offences punishable under Section 406, 420 and 506 of Indian Penal Code, 1860 ('penal code').

3. The indictment against the petitioner in the said FIR is that the petitioner had purchased grey cloth material from Respondent No. 2, Mr. Sanjay Amritkumar Jain- the first informant, worth Rs. 18,04,225/- and declined to pay the price thereof and when the first informant demanded the unpaid price, the petitioner threatened him out of his life. The Respondent No. 2 lodged the report with the allegation that the petitioner had deceived him and committed cheating.

4. The learned counsel for the petitioner and Respondent No. 2 submit that during the pendency of this petition, the dispute between the petitioner and Respondent No. 2 has been amicably resolved. The counsels thus, pray for quashing of the FIR in view of the settlement between the parties.

5. Mr. Sanjay Jain, the Respondent No. 2 has sworn an affidavit in reply. The paragraph 2 and 3 of the affidavit in reply read as under:-

2) I say that the said matter has been fully & finally settled between me and the Petitioner. Now nothing is due from the Petitioner to me or to any of my family members or firms. I do not have any complaint against the Petitioner. Hence, I do not want to continue the said prosecution against the Petitioner, therefore, this is a fit case in which this

Hon'ble Court may quash the proceedings by consent of the parties herein.

3) I say that in view of above, I do not wish to proceed with the C.R. No. 133 of 2019 dated 29/05/2019 registered with Ichalkaranji Police Station, Ichalkaranji and I do not want to prosecute the Petitioner further and withdraw the complaint and all my allegations against the Petitioner and I have no objection if relief is granted to the Petitioner as prayed.

6. Mr. Sanjay Jain, the Respondent No. 2 appeared before this Court through video conferencing. During the course of interaction the Respondent No. 2 stated that he has voluntarily settled the dispute with the Petitioner. The unpaid price of the goods sold to the Petitioner has been paid to him. He has no objection for quashing the impugned FIR.

7. In the light of aforesaid submissions, we have perused the material on record. From the perusal of FIR it becomes abundantly clear that the genesis of the alleged occurrence is in the of sale and delivery of goods. Evidently, the transaction is predominantly of civil nature. The parties have amicably resolved the dispute, which is essentially of private nature.

8. 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 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 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.

1 2012 (10) SCC 303

9. The aforesaid pronouncement applies with equal force to the facts of the instant case. The alleged offence arose out of a commercial transaction, which has a predominantly civil flavour. In view of settlement between the parties, the likelihood of prosecution ending in a conviction is very remote and bleak. Continuation of the prosecution would, therefore, not serve any fruitful purpose. On the contrary, it will cause prejudice to the parties. In view of above, for securing the ends of justice and preventing the abuse of the process of the Court, we are inclined to allow the petition. Hence the following order:-

ORDER

1. The writ petition is allowed, subject to payment of cost of Rs. 25,000/- by the Petitioner, within four weeks from today, in the following bank account.

Bank Name: Bank of India.

Branch Name: Main Branch, Fort, Mumbai.

**A/c. Name: "Bar Council of Maharashtra
and Goa Covid-19"**

A/c. No.: 000110110013597

IFSC Code: BKID0000001

2. The FIR bearing C.R. No. 133/2019 registered with the Ichalkarnaji Police Station, Ichalkaranji, for the offences punishable under Section 406, 420 and 506

of the Indian Penal Code, 1860, and all the consequent proceedings, stand quashed.

3. Rule made absolute in the aforesaid extent.
4. The writ petition stands disposed of.
5. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)