

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1906 OF 2021

Rajiv Babulal Chopra and Anr. ...Petitioners
vs.
The State of Maharashtra and Anr. ...Respondents

Ms. Yogita Deshmukh-Chitnis, for the Petitioners
Dr. F.R. Shaikh, APP for the Respondents-State.
Mr. Sagar Ambedkar, for Respondent No. 2.
Mr. Soyeb Shaikh, Respondent No. 2 present through VC.

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

DATE : **JUNE 22, 2021**
(THROUGH VIDEO CONFERENCING)

P.C.:

1. By this petition under Article 226 of the Constitution of India read with 482 of Criminal Procedure Code, 1973, the petitioners, who are arraigned in C.R.No.45 of 2021 registered with Palghar police station for the offences punishable under sections 420, 406 read with 34 of Indian Penal Code, 1860 and section 13 and 14 of Maharashtra Ownership Flats Act, 1963 seek to quash and set aside the F.I.R and consequent prosecution.

2. The petitioners are the Directors of S.R.K. Real Heights. The petitioners were developing project namely *Namo Shivastu City* at

Palghar(E). Mr. Soyeb Shaikh – Respondent No. 2 the first informant, booked a flat bearing No. B/402 for the consideration of Rs. 12 lakhs. The petitioners executed an agreement for sale on 3rd January, 2019 and accepted consideration of Rs. 10 lakh through banking channel. The first informant claimed that the petitioners, however, did not execute the necessary conveyance. Despite notice, the petitioners failed to accept the balance consideration of Rs. 2 lakhs and convey the said flat as agreed. Instead, the petitioners credited a sum of Rs. 2 lakhs only in the account of the first informant. The first informant thus realized that the petitioners deceived him. Hence, the first informant lodged report with Palghar police station leading to registration of F.I.R. for the offences punishable under sections 420, 406 read with 34 of Indian Penal Code, 1860 and section 13 and 14 of Maharashtra Ownership Flats Act, 1963, vide C.R. No. 45 of 2021.

3. The petitioners claimed that, in the interregnum, the petitioners and Respondent No. 2 – first informant have amicably settled the dispute. The petitioners have thus refunded the sum of Rs. 10 lakhs and also paid a sum of Rs. 1 lakh by way of compensation to the first informant. On 31st March, 2021, the

parties have executed an agreement to cancel the agreement for sale. Hence, this petition for quashing and setting aside the aforesaid prosecution.

4. The petitioners and Respondent No. 2 have appeared before the Court through Video Conferencing. The petitioners and Respondent No. 2 submitted that they have amicably resolved the matter. The Respondent No. 2 specifically acknowledged to have received the sum of Rs. 11 lakhs. The Respondent No. 2 has also sworn an affidavit recording his no objection to quash the prosecution. Paragraph Nos. 3, 4, 6 and 9 of the affidavit read as under:

“3] I say that the Petitioner and I have discussed the above issue outside the Court and arrived at decision to settle the matter amicably instead of prolonging the litigations. Thereafter, the dispute between me and petitioners got settled and we have compromised the case out of Court.

4] I say that I have received the full and final amount of earnest amount along with compensation from the petitioners. I have received total Rs. 11,00,000/- and had cancelled the agreement to sale. I say that the said amount has been received by the way of RTGS and NEFT bank transfers on 31st March, 2021 and amounts of Rs. 11,00,000/- which is inclusive of Rs. 10,00,000/- as a principal amount and Rs. 1,00,000/- as a compensation. Rs. 1,00,000/- has been paid by NEFT transaction having UTR No. KKBK0000629 UTR No. MUM-HDCCR52021033185240009.

6] I say that accordingly we have entered into a Cancellation Deed cum Compromise Deed dated 31.03.2021 and this affidavit is being made in pursuance thereof.

9] I therefore say that I DO NOT HAVE ANY OBJECTION if C.R.No.0045 of 2021 of Palghar police station proceeding arising out of the same for alleged offences punishable under section 420, 406 read with 34 of Indian Penal Code and sections 13 and 14 of Maharashtra Ownership Flats Act against the petitioners is quashed and set aside by this Court.

5. The Respondent No. 2 admits the contents of the affidavit. He is identified by Mr. Sagar Ambedkar, learned counsel for Respondent No. 2. A copy of the agreement dated 31st March, 2021 whereby the agreement for sale dated 3rd January, 2019 was sought to be cancelled is also tendered along with the affidavit.

6. Respondent No. 2 stated before the Court that he has decided to settle the dispute with the petitioners voluntarily. There is no coercion or duress.

7. We have perused the material on record. It appears that the dispute arose between the parties over the non performance of the promise to deliver the possession of a flat in a construction project. Evidently, the dispute has predominantly civil flavour. It

arose from a commercial transaction. The wrong complained of is primarily of private nature. The parties have resolved the entire dispute.

8. In view of the settlement between the parties, the possibility of the prosecution ending in conviction is extremely bleak. No fruitful purpose will be served by keeping the prosecution alive. On the contrary, the continuation of the prosecution would put the parties to great hardship.

9. In the backdrop of the aforesaid circumstances, it would be expedient to quash the prosecution in order to secure the ends of justice and prevent abuse of the process of the Court. A useful reference can be made to the judgment of the Supreme Court in the case of **Gian Singh vs. State of Punjab and Another**¹ wherein the following observations were made:

“But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences 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, High Court may quash criminal proceedings if in its view, because

1 (2012) 10 Supreme Court Cases 303.

of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. In our view the aforesaid pronouncement governs the facts of the case with equal force. We are, thus, inclined to allow the petition. Hence, the following order.

ORDER

The petition stands allowed in terms of prayer clause (a) which reads as under:

(a) That this Court be pleased to quash and set aside the impugned F.I.R. bearing C.R.No.I-0045/21 offences under section 420, 406 and 34 of Indian Penal Code and section 13 and 14 of Maharashtra Ownership and Flats Act, 1963.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)