

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

CRIMINAL WRIT PETITION NO. 2494 OF 2021

Indiabulls Housing Finance Ltd.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Ashok Singh a/w. Mr. R.N. Gaonkar, Ms. Mahi Lalka & Pravin Singh for Petitioner.

Ms. Ridhi Gada for Respondent No. 2.

Mr. Mukesh Pabari Respondent No. 2 is present through video conferencing.

Mr. S.R. Page for Respondent No. 3.

...

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

DATE : 15th JULY, 2021.

ORAL 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 petition is filed with following substantive prayer:-

i) quash the order dated 8th September, 2020 passed by Metropolitan Magistrate, 13th Court, Dadar, Mumbai in Complaint Case No. 29/SW/2020 and MECR No. 1 of 2020 dated 12.11.2020 registered under Section 406, 420 r/w 34 of Indian Penal Code before Dadar Police Station, Mumbai against the Petitioner and set aside all proceedings arising therefrom;

3. Learned counsel appearing for the petitioner, Respondent No. 2, who appears in-person, and learned counsel appearing for Respondent No. 3 jointly submit that the parties have amicably settled the dispute and they have no objection for quashing the pending proceedings.

4. We have interacted with the 2nd respondent who appears in-person, so as to ascertain, whether such amicable settlement is arrived at between the parties with a free will and without any coercion. Respondent No. 2 stated that he has no objection to quash the proceedings i.e. Complaint Case No. 29/SW/2020 and MECR No. 1 of 2020 dated 12.11.2020, registered under Section 406, 420 read with 34 of IPC. The Respondent No. 2 has filed the affidavit. Paragraphs 2 to 6 of the said affidavit read as under:-

2. I say that the Ld. Trial Court vide order dated 8th September, 2020 took cognizance under Section 406 r/w. Section 34 of Indian Penal Code against the Accused and directed the concerned Police State to register the FIR and investigate the matter under Section 156 (3) of the Cr.P.C. Accordingly, a MECR No. 1 of 2020 came to be registered on 12.11.2020 before Dadar Police Station under Section 420, 406 and 34 of Indian Penal Code against the Petitioner and Respondent No. 3.

3. I say that, an amicable settlement has arrived between me and the Applicant. That accordingly we have entered into a Consent Terms dated 11th March, 2021. That as per the

agreed terms and condition between us, I am giving my consent for quashing the MECR No. 01 of 2020 dated 12.11.2020 registered with Dadar Police Station, Mumbai against the Petitioner.

4. I say that I don't have any grievance against the Petitioner and we have settled the dispute amicably. Furthermore I don't want to pursue the said MERC against the Petitioner.

5. I say that I have amicably settled the dispute with the Petitioner and I have no personal grievance, grudge.

6. I say that I have no objection if this Hon'ble court grants the reliefs to the Applicant as prayed by them in their Application.

5. Since the parties have amicably settled the dispute and the Respondent No. 2 has no objection for quashing the proceedings i.e. Complaint Case No. 29/SW/2020 and MECR No. 1 of 2020 dated 12.11.2020, registered under Section 406, 420 read with 34 of IPC, no fruitful purpose would be served by continuing the aforesaid proceedings.

6. Respondent No. 2 has filed the affidavit and has given no objection for quashing the aforesaid proceedings. Therefore, further continuation of proceedings i.e. Complaint Case No. 29/SW/2020 and MECR No. 1 of 2020 dated 12.11.2020, registered under Section 406, 420 read with 34 of IPC, would be an exercise in futility and would tantamount to abuse of the process of law/concerned Court.

7. 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

8. In the light of discussion in foregoing paragraphs and keeping in view the affidavit filed by 2nd respondent, thereby giving no objection for quashing the aforesaid proceedings, the chances of conviction of petitioner are remote and bleak.

9. In view of above, to secure the ends of justice and prevent the abuse of the process of concerned Court, the petition deserves to be allowed. Accordingly, the writ petition is allowed in terms of prayer clause (I), which is reproduced in para 2 of this judgment.

10. Rule made absolute to above extent. The writ petition stands disposed of.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)