

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2001 OF 2018

Yashwinder Singh Ghura,]
R/o. 28, Ghura House, Navyug Housing]
Society, JVPD, Mumbai – 400 056.] ... Petitioner

Versus

1. The State of Maharashtra,]
(through Inspector of Police, Warje-]
Malwadi Police Station).]

2. Vivek Annaji Tanniwar]
R/o. Flat No.11/12, Kundan Plaza,]
Bhau Patil Road, Bopodi, Pune – 411]
020.] ... Respondents

...

Mr. Nikhil Mendge for the petitioner.

Dr. F.R. Shaikh, A.P.P. for respondent No.1 -State.

Mr. Nitesh Mohite i/b Mr. Satyavrat Joshi for respondent No.2.

Respondent No.2 is present in the court.

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**CORAM : S.S. SHINDE &
MANISH PITALE, JJ.**

RESERVED ON : 22ND FEBRUARY, 2021.

PRONOUNCED ON : 25TH FEBRUARY, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. By this writ petition, the petitioner has sought quashing of First Information Report (“FIR”) No.453 of 2016 registered at Warje-Malwadi Police Station for offences under Sections 420, 409 read with Section 34 of the Indian Penal Code (“IPC”).
2. There are two accused persons in the said FIR. It was claimed by respondent No.2 (original complainant) that the petitioner and the said other accused person had allegedly duped him, which led to registration of FIR.
3. While filing the writ petition, it was brought to the notice of this court that the petitioner and respondent No.2 had amicably settled their dispute and that the petitioner was ready to deposit an amount of Rs.29,50,000/- in the Registry of this court in terms of the settlement between the parties and that, such amount could be withdrawn by respondent No.2.
4. On 19/12/2019, we recorded the fact that the petitioner and respondent No.2 were jointly requesting for quashing of the FIR. The petition stood adjourned at the request of respondent No.1-State to make a statement about the antecedents of the parties. Prior to the said order, respondent No.2 had placed on record an affidavit in reply stating that

the petitioner and respondent No.2 had entered into a Memorandum of Understanding dated 18/01/2018 in pursuance of which, the dispute was amicably settled. It was further stated in the affidavit that the petitioner had deposited the aforesaid amount of Rs.29,50,000/- in this court and that he had also paid Rs.7,00,000/- by Demand Draft to respondent No.2.

5. Thereafter, respondent No.2 filed an additional affidavit in reply dated 19/12/2019 stating that he not only had no objection to quashing of the FIR qua the petitioner but, he also had no objection for quashing of the FIR against the other accused person i.e. Amit Gadekar. The relevant paragraphs of the said additional affidavit in reply read as follows:

“2. I say that I and the Petitioner herein have entered into the Memorandum of Understanding (‘MOU’ for short) on 18th January, 2018. I say that I confirm that the said MOU is signed by me and in light of this MOU, we have arrived at an amicable settlement.

3. I say that the Petitioner herein has deposited an amount of Rs.29,50,000/- in the registry of the Hon’ble High Court and he has also paid an amount of Rs.7 Lakhs to me by way of a Demand Draft.

4. I say that in light of the MOU, which is arrived at by way of understanding between myself and the Petitioner herein dated 18th January, 2018, I have no objection for quashing of the FIR bearing C.R.

No.453/2106 registered with the Warjermalwadi Police Station, Pune, qua the Petitioner.

5. I say that also I have no objection for quashing of the FIR bearing C.R. No.453/2016 registered with the Warjermalwadi Police Station, Pune, against the Petitioner as well as shri Amit Gadekar.

6. In so far as the co-accused Shri Amit Gadekar is concerned I have given my consent for quashing the FIR bearing C.R. No.453/2016 registered with the Warjermalwadi Police Station, Pune, against Shri Amit Gadekar without prejudice to my rights regarding criminal proceedings in S.C.C. No.411976 of 2015 which is pending before the Honorable 32nd JOINT CJSD AND ADDL.CJM, PUNE filed under section 138 of Negotiable instrument Act against co-accused Shri. Amit Gadekar.

7. I say that I do not wish to pursue the FIR bearing C.R. No.453/2016 registered with the Warjermalwadi Police Station, Pune, against the present Petitioner since both parties have now arrived at amicable settlement and it is in these circumstances that I do not wish to prosecute the present Petitioner.”

6. On 17/02/2021, when the petition was called out for hearing, respondent No.2 was personally present in the court. We interacted with him and he stated that he had filed the affidavit in reply and additional affidavit in reply voluntarily without any coercion and that he had no objection to the FIR being quashed against the petitioner as well as the aforesaid other accused person.

7. We had adjourned the petition to be listed on 22/02/2021. On the said date, Dr. Shaikh, learned A.P.P. confirmed the fact that the petitioner had no criminal antecedents. Even on 22/02/2021, respondent No.2 was personally present in the court and he reiterated his no objection for quashing of the FIR.

8. The Supreme Court in the case of **Gian Singh v. State of Punjab & Anr.**¹ has held that the criminal cases having overwhelmingly and predominately 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 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, 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 has also held that 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. Applying the aforesaid position of law laid down by the Hon'ble Supreme Court to the facts of the present case, it becomes clear that even in the present case, the dispute between respondent No.2 and accused persons appears to be of a private and commercial nature and that having amicably settled the same, respondent No.2 does not wish to pursue the same any more. Therefore, any further proceedings in pursuance of the said FIR would be of no consequence and the petition therefore, deserved to be allowed. But, at the same time, we are of the opinion that the petitioner ought to deposit some costs towards a noble cause. On a specific query put to learned counsel appearing for the petitioner, he stated on instructions from the petitioner, who is present in the court, that the petitioner will voluntarily deposit an amount of Rs.25,000/- within two weeks from today, in the account of the Children's Aid Society, Mumbai, the details of which are as follows:

Name	:	The Children's Aid Society, Mumbai.
SB. A/c. No.	:	02370100005612
Bank	:	UCO Bank
IFSC Code	:	UCBA0000237

10. On the costs being deposited by the petitioner in the aforesaid bank account, the Children's Aid Society, Mumbai, shall immediately transfer the said amount of costs to the New and Additional Children's Home, Mankhurd, Mumbai.

11. In view of the above, the writ petition is allowed in terms of prayer clause (b) of the petition.

12. In view of the specific statement made on affidavit by respondent No.2 before this court, the FIR is quashed in respect of the petitioner – Yashwinder Singh Ghura as also other accused person viz. Amit Gadekar. But, this order will come into effect only on the condition that the petitioner deposits the aforesaid amount towards costs within the stipulated period of time. In terms of the settlement between the parties, respondent No.2 is permitted to withdraw the aforesaid amount of Rs.29,50,000/- deposited in this court by the petitioner.

13. Rule is made absolute in the aforestated terms.

14. List the matter on 12/03/2021 under caption “For Compliance”.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)