

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2742 OF 2021

- | | | |
|----|--|---------------------|
| 1] | Satish Shankarlal Mina |] |
| | aged about 29 years, occu : Business |] |
| | r/o. Plot No.5B, Nutan Nagar, Near Azad |] |
| | Weight Bridge, Vapi, Pardi, Valsad |] |
| | Gujrat – 396191 |] |
| | |] |
| 2] | Shankar Maturam Mina |] |
| | aged about 51 years, occu : Business |] |
| | r/o. Plot No.5-B, Nutan Nagar, Near Azad |] |
| | Weight Bridge, Vapi, Pardi, Valsad |] |
| | Gujrat – 396191 |] |
| | |] |
| 3] | Virendra Kumar Kedarnath Mishra |] |
| | Aged about 57 years, Occ : Business, |] |
| | r/o. Ashray Society Bholav, Bharuch, |] |
| | Gujarat – 392001 |] |
| | |] |
| 4] | Babbulal Trilokinath Pandey |] |
| | Aged 53 years, Occ : Business |] |
| | residing at ; Flat No.01, Divya Plaza |] |
| | Sharadwadi Road, Sinnar, Nashik |] |
| | |]..... Petitioners. |

Versus

- | | | |
|----|--|---------------------|
| 1] | The State of Maharashtra |] |
| | |] |
| 2] | Sr. Inspector of Police |] |
| | Borivali Police Station, Mumbai |] |
| | |] |
| 3] | Mr. Shailendra Suresh Choksi |] |
| | R/o. 12, D-1, Estee Geejay CHS Ltd, Near |] |
| | Sai Baba Mandir, Borivali (West), |] |
| | Mumbai – 400 092 |]..... Respondents. |

Mr. Prabhakar Tripathi and Mr. R C Mishra i/by Tripathi & Associates for the
Petitioners.

Smt. A S Pai, PP, for the Respondent/State.

Mr. Madhurudan Pareek for Respondent No.3.

Mr. Shailendra S Choksi - Respondent No.3 present.

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

Reserved on : 10th August 2021
Pronounced on : 13th August 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 This Writ Petition has been filed by the Petitioners for the following substantial relief :-

(a) That this Hon'ble Court be pleased to quash the FIR being C. R. No.297 of 2019 registered by Borivali Police Station at the instance of the Respondent No.3 herein for the alleged offence punishable u/s 420, 406, 34 of I.P.C. in the interest of justice.

3 The learned counsel appearing for the Petitioners submitted that the 3rd Respondent has lodged FIR No.297 of 2019 with Borivali Police Station against the Petitioners for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code. It is submitted that the said FIR is an outcome of the business transaction. It is also submitted that the Petitioners have applied for anticipatory bail application before the Hon'ble Sessions Court, Dindoshi. The said anticipatory bail came to be rejected by the Sessions Court, Dindoshi. The said rejection order has been challenged before this Court by way of Anticipatory Bail Application No.1771 of 2019 (Satish Shankarlal Mina and ors. v/s. State of Maharashtra and anr.) In the interregnum, the parties have

arrived at a settlement, and the consent terms between the parties have been signed by the Applicants, Respondent No.3 and their respective advocates. It is submitted that the said consent terms arrived at between the parties have been filed in the said ABA No.1771 of 2019.

4 The 3rd Respondent was present before this Court on 10th August 2021, when the matter was heard. He was identified by his advocate. He stated that it is his voluntary act to settle the dispute and there is no coercion or undue influence upon him for arriving at the said settlement.

5 In support of the said settlement, the 3rd Respondent has filed his affidavit in the present Writ Petition. Paragraphs 2 to 5 of the said affidavit read thus :-

“2 *I say that pending investigation of above referred crime myself and the Petitioners decided to amicably settle the dispute in question and accordingly have settled our dispute on the terms and condition mentioned specifically in consent terms executed between us. The said consent terms is placed on record before this Hon’ble Court in present petition for kind perusal of this Hon’ble Court.*

3 *The present Affidavit is filed by me with a understanding that the Petitioners and myself have mutually settled their respective disputes amongst us and on the basis of the said amicable settlement, I hereby withdraw all the allegations made by me against the Petitioners and do not intend to proceed further in the criminal case filed against the Petitioner. This present term is binding on me and I undertake to abide by the same on compliance of the terms and conditions mentioned in consent terms*

executed between myself and petitioners.

4 *I have no claim of whatsoever in nature against the Petitioners after I receive the settlement amount as mentioned in consent terms and as per the order passed in ABA 1771 of 2019 and the present Affidavit may be treated as consent for quashing of the above FIR registered with Borivali Police Station, Mumbai vide FIR No.297 of 2019 under section 420, 406, 34 of Indian Penal Code.*

5 *Hence, without going into the merits of the matter and without intending to press allegations levelled by me, I seek to withdraw allegations against the Petitioner in the light of the above settlement arrived at between both the parties. I further stated that the same is being done by me without any coercion, force or influence and is given out of my free consent.*

6 The learned counsel appearing for the parties submitted that the parties have voluntarily agreed to settle the dispute and there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that the parties have amicably resolved/settled the dispute and decided to seek relief of quashing of impugned FIR by way of filing this Writ Petition. In support of the said settlement, they have also placed on record the Consent Terms duly signed by the parties as well as their respective advocates.

7 During the course of hearing, the learned Public Prosecutor appearing for the Respondent/State, on instructions, submits that there are no criminal antecedents against the Petitioners.

8 With the able assistance of the learned counsel appearing for the parties, we have perused the recitals of the said Consent Terms. The copy of the said consent terms dated 07th April 2021 is placed on record at page 101 of the writ paper book (Exhibit-F). The consent terms are duly signed by the original complainant i.e. the 3rd Respondent herein, and the Applicants/Accused and their respective advocates. It would be apt to reproduce herein under the recitals of the said consent terms for ready reference :-

“CONSENT TERMS

The Applicant/Accused and the Org. Complainant both have agreed to settle the entire dispute amicably and thereby have agreed to file the Consent Terms as under :-

1. *That, both the parties have confirmed that during pendency of the above Anticipatory Bail Application, the accused/applicants have deposited Rs.55,00,000/- with the registry of this Hon’ble Court to show their bonafide without prejudice to their rights and contention as directed by this Hon’ble Court.*
2. *That, both the parties i.e. the complainant and the accused in the present F.I.R. no.297 of 2019 punishable u/s 420, 406 of I.P.C. registered with Borivali Police Station, Mumbai arisen out of account disputes is amicably settled and none of them have any grievance against each other.*
3. *That, both the parties have agreed to present the petition for quashing the present F.I.R. No.297 of 2019 punishable u/s 420, 406 of I.P.C. registered with Borivali Police Station, Mumbai before the Division Bench of this Hon’ble Court.*
4. *That, both the parties have agreed that on quashing of the present F.I.R. No.297 of 2019 punishable u/s 420,*

406 of I.P.C. registered with Borivali Police Station, Mumbai, the amount of Rs.40,00,000/- (Rupees Forty Lakh only) to be given to the complainant, and balance Rs.15,00,000/- (Rupees Fifteen Lakh) to be refunded to the applicant/accused forthwith.

5. That, both the parties have agreed that the complainant will fully co-operate and make clear and bold submissions before the Hon'ble Court in regards to amicable settlement reached by and between the parties, so that, on the basis thereof, the impugned F.I.R. would be quashed, and after quashing the F.I.R. the present application to be disposed of on the ground and in terms of settlement.
6. That, both the parties agreed that after execution of this settlement, no any short of claim, complaint or grievance will residue or remain against each other and no any proceeding/s either civil and or criminal concerning and/or touching to the subject matter of the present application will be maintainable and or entertained in any court of law.
7. Notwithstanding what is provided in this consent terms, breach of any of the clauses mentioned above shall be construed as an event of default thereof and the non-defaulting party shall have the right to seek the legal recourse to challenge such a breach and seek necessary legal reliefs from competent court.
8. That, both the parties have read over the terms and conditions mentioned hereinabove and confirmed it to be exactly as amicably settled between them and further confirm that the terms and conditions of this consent terms shall be fully & effectually binding upon the parties hereundersigned verbatim. The parties hereundersigned are identified by their respective advocates."

9 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ has held that, the criminal cases having overwhelmingly and

¹ 2012 (10) SCC 303

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.

10 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further investigation of FIR No.297 of 2019 registered with Borivali Police Station against the Petitioners for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code.

11 In the light of discussion in foregoing paragraphs, it is abundantly

clear that the 3rd Respondent is not going to support the allegations made against the Petitioners in the impugned FIR, and further continuation of investigation in impugned FIR would tantamount to the abuse of the process of the Law/Court. Since the first informant i.e. the 3rd Respondent is not going to support the allegations made in the FIR, the chances of the conviction of the accused would be remote and bleak.

12 It is pertinent to note at this stage that though the parties have resolved/settled their dispute between them and approached this Court for quashing of the FIR lodged by the 3rd Respondent against the Petitioners, we deem it appropriate to impose costs upon the parties. Accordingly we direct the Petitioners to deposit costs of Rs.15,000/- and the 3rd Respondent to deposit costs of Rs.15,000/- with the Children's Aid Society, Mumbai, who in turn transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai.

13 For the reasons stated herein above, the Writ Petition is allowed in terms of prayer clause (a), subject to depositing Rs.15,000/- by the Petitioners and Rs.15,000/- by the 3rd Respondent, which reads thus :-

(a) That this Hon'ble Court be pleased to quash the FIR being C. R. No.297 of 2019 registered by Borivali Police Station at the instance of the Respondent No.3 herein for the alleged offence punishable u/s 420, 406, 34 of I.P.C. in the interest of justice.

14 The Petitioners to deposit Rs.15,000/-, and the 3rd Respondent to deposit Rs.15,000/- in the Bank of Children's Aid Society, Mumbai within two weeks from today, details of which are as under:-

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

On deposit of costs of Rs.15,000/- by the Petitioners and costs of Rs.15,000/- by the 3rd Respondent in the aforesaid bank account, the Children Aid Society, Mumbai shall immediately transfer the said amount of costs for betterment of the children to the New and Additional Children's Home, Mankhurd, Mumbai.

15 As per the Consent Terms arrived at between the Petitioners and the 3rd Respondent, the Petitioners have deposited Rs.55,00,000/- (Rupees Fifty Five Lakhs only) with the Registry of this Court. In terms of clause (4) of the said Consent Terms, the amount of Rs.40,00,000/- (Rupees Forty Lakhs only) is to be given to the complainant i.e. the 3rd Respondent, and balance amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) is to be refunded to the Petitioners. The Registry shall hand over the amount of Rs.40,00,000/- (Rupees Forty Lakhs only) to the complainant i.e. the 3rd Respondent, and shall refund the balance amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the Petitioners. The Registry shall also give the interest, if any, accrued on the

amount of Rs.40,00,000/- to the complainant i.e. the 3rd Respondent and, the interest, if any, accrued on the amount of Rs.15,00,000/- to the Petitioners.

16 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly. List the Petition on 27th August 2021 under caption “For Compliance” of deposit of costs.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]