

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2762 OF 2021

Buildtech Shelter and Others

...Petitioners

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Anmol Bartaria, for the Petitioners

Ms. Lakshmi Bossa a/w. Mr. Rakesh Singh i/b. M.V. Kini & Co., for
Respondent No. 2.

Ms. M.H. Mhatre, APP for the Respondent-State.

Mr. Mohammed Tufail Ansari, the Respondent No. 2 present.

CORAM :

S. S. SHINDE &

N. J. JAMADAR, JJ.

DATE :

SEPTEMBER 23, 2021

ORAL JUDGMENT (Per N.J.Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1979 (the Code) is filed to quash and set aside the first information report bearing C.R. No. 348 of 2021 registered with Oshiwara police station, Mumbai for the offences punishable under sections 406, 420 read with 34 of Indian Penal Code, 1860 (the Penal Code).

3. The indictment against the petitioners is that the respondent

**VISHAL
SUBHASH
PAREKAR**

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VISHAL SUBHASH
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No. 2 – first informant was induced to part with the sum of Rs. 40 lakhs by making a false representation that Flat No. A-1303 will be sold to the first informant.

4. Mr. Anmol Bartaria, learned counsel for the petitioners and Ms. Lakshmi Bossa, learned counsel for respondent No. 2 make a joint statement that in the intervening period the petitioners and respondent No. 2 have amicably resolved the dispute. The parties have entered into a Deed of Settlement on 7th July, 2021; a copy of which is annexed to the petition (Exh.B). Pursuant to the terms of settlement, the respondent No. 2 does not desire to prosecute the petitioners any further. The respondent No. 2 has sworn an affidavit giving consent to quash the first information report.

5. Respondent No. 2 appeared before this Court. We have interacted with him. He submitted that he has decided to resolve the dispute with the petitioners voluntarily. He has sworn the affidavit out of his own volition and there is no coercion or duress.

6. Clause (1) of the Deed of Settlement read as under:

(1) The party of the First Part and the party of the Second Part hereby mutually agreed to settle the issue of refund of amount of Rs. 40 lakhs paid by the party of the First Part to the party of the second part against booking of Flat No. A-1303 with regards to an under construction building known as Bhavya Enclave situated at Nehru Road, Vakola Bridge, Santacruz (East).

(2) The party of the second part herein have agreed to repay the amount of Rs. 40 lakhs to the party of the First part as full and final refund of the amount paid towards booking of Flat No.A-1303. The party of the First part hereby agrees to accept a full and final consideration amount paid towards booking of Flat No.A-1303 and hereafter the party of the first part will have no claims or rights of whatsoever nature against the said Flat No.A-1303, subject to realization of entire amount of settlement which is Rs. 40 lakhs only.

(3) The party of the second part hereby agrees and undertakes to refund the part amount of Rs. 20 lakhs vide Pay order bearing No. 017320 dated 07-05-2021 drawn on ICICI bank, Jogeshwari Branch and Rs. 10 lakhs vide Pay order bearing No. 017318 dated 07-05-2021 drawn on ICICI Bank, Jogeshwari Branch. On the date of signing of this Deed of Settlement.

(4) The party of the second part hereby agrees to refund the balanced part amount of Rs. 10 lakhs by way of valid pay order for realization bearing No. 017319 dated 07-05-2021 drawn on ICICI Bank, Jogeshwari branch to the party of the first part. Such pay order will be handed over to the party of the first part on the day of recording statement before the High Court confirming about such amicable settlement. The party of the first part will co-operate with the party of the second part till the quashing of FIR No. 348 of 2021 or till the final disposal of case before the High Court of Mumbai and also before any other Court whenever necessary with respect to the subject case. The party of the second part shall immediately try to file the petition before the High Court . However, due to prevailing pandemic covid situation and Court vacation the petition should be filed within 4 weeks from the present executing or the earliest possible time available.

7. Paragraph Nos. 2 to 6 of the affidavit of respondent No. 2 read as under:

2] I say that I had booked Flat No. A-1303 in the under construction building known as Bhavya Enclave situated at Nehru Road, Vakola Bride, Santacruz (E) being developed by the petitioner No. 1. I say that I had made payment of Rs. 40 lakhs towards aforesaid booking and had sought refund of the said flat.

3] I say that the petitioner No. 1 and others had issued cheque for Rs. 10 lakhs and Rs. 30 lakhs which was dishonour. Upon such dishonored, respondent No. 2 has filed case No. SS/4404341/2019 under section 138 read with 141 of the Negotiable Instruments Act, 1881 which is pending before the

Metropolitan Magistrate Court, Andheri, Mumbai. Also, respondent No. 2 filed complaint with Oshiwara police station which has been registered as F.I.R No. 348 of 2021 under section 420 and 406 read with 34 of I.P.C.

4] I say during the pendency of the above proceedings the parties have decided to put an end to the dispute. The parties have entered into a Deed of Settlement dated 7th August, 2021, which is already on records and marked as Exhibit B to the Petition. Under the Deed of Settlement this respondent No. 2 has agreed that on receipt of total amount of Rs. 40 lakhs this respondent No. 2 shall have no claim and/or liability towards and/or against the petitioners.

5] I say that in view of this understanding the petitioners No. 1 has paid an amount of Rs. 30 lakhs and balance of Rs. 10 lakhs is pending. The petitioners in accordance with the Deed of Settlement dated 7th August, 2021 has promised/assured the respondent No. 2 of giving entire payment of Demand Draft. On receipt the balance amount the respondent No. 2 shall make statement before the Court of for No Objection and shall also withdraw all the pending case against the petitioners. The details of Demand Draft to be handed over are Demand Draft No. 17319 dated 7th May, 2021 re-validated on 9th August, 2021 drawn on bank ICICI Bank Jogeshwari Bank.

6] I say that present Petition is filed for quashing of F.I.R No. 348 of 2021 under section 420, 406 read with 34 of IPC. Pursuant to the execution of Deed of Settlement and upon receiving the balance amount of Rs. 10 lakhs in the form of DD due from petitioners this respondent No. 2 has no objection if the FIR No. 348 of 2021 is quashed by this Court.

8. Respondent No. 2 submitted before the Court that in accordance with the understanding between the parties as referred to in paragraph No. 5 of the affidavit, the petitioners have delivered today a Demand Draft for the sum of Rs. 10 lakhs. We record the statement of the respondent No. 2.

9. It seems that the genesis of the dispute is in a commercial

transaction between the parties. The dispute is predominantly of a civil nature. The parties have decided to resolve the dispute in its entirety. In such circumstances, the continuation of the prosecution would not serve any fruitful purpose. It is very unlikely that the respondent No. 2 would support the prosecution and it would end in a conviction. Continuation of the prosecution, on the contrary, would cause grave prejudice not only to the petitioner but respondent No. 2 as well. It would also amount to abuse of the process of the Court.

10. In the case of *Gian Singh vs. State of Punjab*¹, the Three Judge Bench of Supreme Court, inter alia, expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

“61. But 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, High Court may quash 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 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

1 (2012) 10 Supreme Court Cases 303.

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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

11. The aforesaid proportions apply with full force to the facts of the case at hand. Thus, in order to secure the ends of justice and to prevent the abuse of the process of the Court, we are persuaded to allow the petition and quash the first information report No. 348 of 2021 and all consequent proceedings arising out of the said first information report, subject to payment of the costs by the petitioners.

12. The learned counsel for the petitioners submits that the petitioners would pay costs of Rs. 25,000/-

13. The petition thus deserves to be allowed subject to payment of costs

of Rs. 25,000/- in the following account:

Name of Bank of Account:	Children Aid Society Donation
Bank Account No.:	02370100005612
Bank Name:	UCO Bank
Branch:	Matunga (Mumbai),
IFSC Code:	UCBA0000237

Hence, the following order:-

ORDER

1] The petition stands allowed in terms of prayer clauses (a) subject to depositing costs of Rs. 25,000/-, in the account mentioned herein above, within three weeks from today.

Prayer clause (a) reads as under:

(a) This Court be pleased to call for records and proceedings in respect of the FIR No. 348 of 2021 under section 420, 406 read with 34 of IPC registered on 06/05/2021 at Oshiwara police station at the behest of the respondent No. 2 and after examining the same, this Court be pleased to quash and set aside the same.

2] Rule made absolute in aforesaid terms.

3] Parties to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)