

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

CRIMINAL APPLICATION NO. 500 OF 2020

1. Pankaj Shah
Aged about 55 years,
Occupation : Business, An adult, Indian
Inhabitant, Having address at G-5,
Mangal Kunj, Jambli gali, Borivali –
West, Mumbai-400 092
2. Hitesh Mehta
Aged about 49 years, Occupation :
Business, An adult, Indian Inhabitant,
Having address at 601, Pooja residency
near Kora Kendra ground, Dehrasar
lane, Ram Nagar, Borivali – West,
Mumbai-400 098
3. Mahesh Koradia,
aged about 61 years, Occupation :
Business, An adult, Indian Inhabitant
having address at A-1305, Sanskar New
Nilam Nagar, Opp. Jain Mandir, Mulund
East, Mumbai.

...Applicants

Versus

1. The State of Maharashtra
(Through Senior Inspector of Kanjur
Marg Police Station, Mumbai).
2. Nilesh Kudalkar,
Aged about 48 years, Occupation :
Business, An adult, Indian Inhabitant,
having address at Flat No.12, Chembur
Santosh Co-op. Hsg. Society Ltd., Plot
No.46B, Chembur (East), Mumbai-71.

...Respondents

Mr. Mehul Shah, for the Applicants.
Mrs. S. D. Shinde, APP for the State/Respondent no.1.
Mr. Kuldeep Patil, for Respondent no.2.
Respondent no.2 present in Court and interacted.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.
DATED: 3rd AUGUST, 2021.**

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. The applicants have preferred this application for quashing the First Information Report No.63 of 2020, registered at Kanjurmarg Police Station, Mumbai, for the offences punishable under Sections 420, 467, 471, 406 and 36 of the Indian Penal Code, 1860 ("the Penal Code") by Mr. Nilesh Kudalkar – respondent no.2, on the basis of the settlement arrived at between the parties.

3. The gravamen of indictment against the applicants is that respondent no.2 and the applicants formed a company for the purpose of redevelopment of a society Anandham Co-operative Housing Society Ltd., Nahur (E), Mumbai – 400 042. A joint Development Agreement was executed on 3rd October, 2008 and the company, namely, M/s. Kings Empire Heights Pvt. Ltd. ("the Company") came to be registered in the year 2009 under the Companies Act, 1956. The applicants and respondent no.2 each had 25% share capital in the said company. Disputes arose between the applicants and respondent no.2.

4. On 5th March, 2020, respondent no.2 lodged a report with the allegation that applicant no.3 Mahesh Koradia sold Flat No. A-604 to Smt. Kamal Malve and Mr. Shankar Malve without executing a conveyance. Applicant no.1 Pankaj Shah represented the Malves' that he was the absolute owner of the Company and obtained a sum of Rs.25,00,000/- from Mr. Malve. The said flat was sold at a loss of Rs.28,70,000/- to the Company. Applicant no.1 also forged the signature of respondent no.2 for obtaining completion certificate. The applicants allegedly purchased four plots at Shahapur in the name of the Company without the consent of respondent no.2.

5. Mr. Mehul Shah, the learned Counsel for the applicants and Mr. Kuldeep Patil, the learned Counsel for respondent no.2 made a joint statement that the applicants and respondent no.2, the erstwhile Directors of the Company, have amicably resolved the dispute. Pursuant to the settlement arrived amongst the Directors of the said company, Consent Terms were filed in the Company Petition No.90 of 2019, instituted by respondent no.2 and others, and in the arbitration proceedings before the Arbitral Tribunal of Advocate Mr. Cyrus Bharucha, the sole Arbitrator. It was further submitted that respondent

no.2 has sworn an Affidavit giving his no objection to quash the prosecution.

6. Respondent no.2 Mr. Nilesh Kudalkar appeared before this Court. He was identified by Mr. Patil, the learned Counsel for respondent no.2. Upon interaction Mr. Nilesh Kudalkar – respondent no.2 – first informant submitted that he has voluntarily entered into the settlement of the dispute with the applicants. The Consent Terms were executed before the NCLT and the learned Arbitrator, out of his own volition. There is no coercion or duress. He admitted the contents of the Affidavit dated 17th December, 2020. Paragraphs 2 to 4 of the Affidavit read as under:

“2. I say that now I do not wish to pursue the said complaint/case filed by me as I have settled all my disputes and differences with them and now wish to live in peace and harmony. I have entered into consent terms with Kings Empire Heights Pvt. Ltd. and its director Mr. Pankaj Shah in Arbitration Proceedings of Kings Builders and Developers and Company Petition no. 90 of 2019 before the respective Tribunals and more so I have also received the entire payment due to me as more particularly set out in the said consent terms dated 28/09/2020 and further have no grievances against them of any nature whatsoever against any shareholder and/or director of the Kings Empire Heights Pvt. Ltd. I therefore hereby declare and confirm that the allegations made by me in the Complaint dated 23/09/2019 and statement given in the FIR against 1. Mr. Pankaj Shah 2. Mahesh Koradia and 3. Hitesh Mehta stands unconditionally withdrawn.

3. I say that I am ready and willing to give and do hereby give my “No Objection” for quashing of the said FIR bearing no.63 of 2020 before the Hon’ble High Court as I have no surviving cause of action to pursue the said case against (1) Mr. Pankaj Shah (2) Mr. Mahesh Koradia and (3) Mr. Hitesh Mehta.

4. I say that I am making this Affidavit out of my own free will and as per the terms and conditions of the consent terms signed and filed by me in all civil litigations mentioned hereinabove and to co-operate in quashing/compounding of the said case.”

7. We have perused copies of the Consent Terms in Company Petition No.90 of 2019 (Exhibit ‘C’) and in the arbitration proceedings before the Arbitral Tribunal (Exhibit ‘D’), annexed to the petition. In the backdrop of the fact that the dispute revolved around allotment of Flat No.604 to Mr. Shankar Malve and Mrs. Kamal Malve, we thought it appropriate to interact with Mr. Malve. An Affidavit of Mrs. Kamal Malve and Mr. Shankar Malve came to be filed. Mr. Malve informed the Court that they have been put in possession of Flat No.A-604, and the registered agreement was executed on 20th January, 2021 by the Kings Empire Heights Pvt. Ltd. in their favour. They have no grievance or complaint against the Company.

8. From the perusal of the material on record, it appears that the alleged offences have their genesis in the dispute amongst the Directors of the Company. It further appears that the dispute resulted in institution of multiple proceedings, including complaints and cross-complaints. The parties amicably resolved the dispute. The purchasers of Flat No.A-604 have no subsisting grievance against the Company.

9. A useful reference in this context 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 Supreme Court has observed as under;

“61 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.”

10. Applying the ratio of the aforesaid case to the facts of the case at hand, it becomes evident that the alleged offences, in the case at hand, primarily arose out of a commercial dispute and particularly the, *inter se*, dispute between the Directors of the Company. The transaction has predominantly civil flavour. Ultimately, the dispute is resolved in its entirety. In view of the settlement arrived at between the parties, the possibility of the prosecution ending in a conviction is extremely remote and

¹ 2012 (10) SCC 303

bleak. Thus, no fruitful purpose would be served by keeping the prosecution alive except putting unnecessary burden on the criminal justice system. The parties would also suffer great prejudice.

11. Consequently, in order to secure the ends of justice and prevent the abuse of the process of the Court, we are persuaded to allow the application and quash the prosecution.

12. Hence the following order:

: ORDER :

- (i) The petition stands allowed in terms of prayer Clause (c).
- (ii) FIR No.63 of 2020 and all consequential proceedings stand quashed and set aside.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]