

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

CRIMINAL WRIT PETITION NO. 3797 OF 2021

Amit Lalitchandra Shah & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Vijay Hiremath for Petitioners.

Dr. Abhinav Chandrachud i/b. Prem Kumar Pandey for Respondent No.2.

Mr. K. V. Saste, APP for State/Respondent.

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 15 NOVEMBER 2021

P.C. :

1. This writ petition filed under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure seeks quashing of F.I.R. No. 51 of 2018 dated 05 February 2018 filed by the Respondent No.2, the charge-sheet filed by the Mulund Police station, Mumbai and the case No.151 of 2019 pending before the Metropolitan Magistrate, 27th Court, Mulund, Mumbai.

2. The Respondent No.2 had filed an F.I.R. alleging that the Respondent No.2 had met the Petitioners in a exhibition where the

petitioners had put a stall under the name of the company M/s. Bueno Insta Pizza Pvt. Ltd. The Respondent No.2 had also put up a stall at the same time. Thereafter the Respondent No.2 agreed to invest Rs.24 Crores in the company of the Petitioners and a Memorandum to that effect was executed on 01 April 2016. According to the Respondent No.2, from time to time, the Petitioners invested certain amounts. The differences arose between the parties and the Petitioners refused to return the amount. The Petitioners did not fulfill their promise of making the Respondent No.2 as Director in the company. With these allegations the F.I.R. was lodged.

3. The petition is filed with the averments that the Petitioners and the Respondent No.2 have resolved their dispute subsequent to the filing of F.I.R. and pray that the F.I.R. and subsequent proceedings based on the same be quashed with the consent of parties. The learned counsel have also handed over copy of the consent terms signed by the parties as identified by the advocates. The learned counsel for the parties, on instructions, reiterate that the parties have agreed for what they have stated in the consent terms. The consent terms are taken on record and marked 'X' for identification. The consent terms read thus:

CONSENT TERMS

1. *Petitioner/s, in their capacity as directors and shareholders of Bueno Insta Pizza Pvt Ltd. ("**the Company**") had entered into*

business arrangements with Respondent No. 2 (“the investor”) that became the subject of disputes leading to multiple complaints / proceedings and counter complaints/proceedings (both Civil and Criminal), wherein Mr. Nilesh Thacker and Mrs. Hansa Thacker, the brother and sister in law respectively of the Respondent No. 2 were also joined as parties (hereinafter referred to as Confirming Party No. 1 and 2 respectively) . Petitioner/s, Respondent No. 2 along with Confirming Party Nos. 1 and 2 are hereinafter collectively referred to as “Parties”.

2. *On the intervention of well-wishers, Parties have agreed to amicably resolve/ settle all interse disputes and differences between them without entering into the merits thereof, on the terms set out hereunder.*

3. *The Petitioners hereby agree and undertake that they will make an application before the concerned court for withdrawing the following proceeding and all/any applications filed therein within a period of 2 weeks from the date of this Petition being allowed:*
 - I. *BEFORE THE CIVIL JUDGE SENIOR DIVISION
THANE/ BHIWANDI.
CIVIL COURT SENIOR DIVISION, THANE
SPECIAL CIVIL SUIT (SPL. C.S) NO.245 OF 2019
(Filed u/s. 34 and 38 of the Specific Relief Act, 1963)*

Bueno Insta Pizza Pvt Ltd.) ...Plaintiff

Versus.

*i. Mitesh Kantilal Thacker)
ii. Nilesh Thacker)
iii. Hansa Thacker) ...Defendant/s*

II. *BEFORE THE MAGISTRATE FIRST CLASS, THANE/
BHIWANDI/ CIVIL COURT JUNIOR DIVISION,
BHIWANDI CRIMINAL COMPLAINT NO. 779 OF
2019*
(Filed u/s. 34 and 38 of the Specific Relief Act, 1963)

<i>Manoj Chandrakant Vithalani</i>	)	<i>...Plaintiff</i>
Versus		
<i>i. Mitesh Kantilal Thacker</i>	)	
<i>ii. Nilesh Thacker</i>	)	
<i>iii. Hansa Thacker</i>	)	<i>...Defendant/s</i>

III. *BEFORE THE MAGISTRATE FIRST CLASS, THANE/
BHIWANDI/ CIVIL COURT JUNIOR DIVISION,
BHIWANDI
MISCELLANEOUS CRIMINAL APPLICATION
(OMCA) NO. 586 OF 2019*
(Filed u/s. 420, 406, 504 and 506 r/w sec. 34 of the Indian
Penal Code, 1860)

<i>Bueno Insta Pizza Pvt Ltd.</i>	)	<i>...Complainant</i>
Versus		
<i>i. Mitesh Thacker</i>	)	
<i>ii. Nilesh Thacker</i>	)	
<i>iii. Hansa Thacker</i>	)	<i>...Respondent/s</i>

IV. *BEFORE THE CITY SESSIONS COURT, AT MUMBAI,
CRIMINAL REVISION APPLICATION NO. 440 OF
2021*
(Filed u/s. 406 and 420 r/w. sec. 34 of the Indian Penal
Code, 1860)

i. Sudhir Jayantilal Undevia)
ii. Amit Lalitchandra Shah)
iii. Manoj Chandrakant Vithalani) ...Applicant/s
 Versus
The State of Maharashtra and Ors.) ...Respondent/s

4. Respondent No. 2, Nilesh Thacker and Hansa Thacker hereby agree and undertake that they will make an application before the concerned court for withdrawing the following proceeding and all/any applications filed therein within a period of 2 weeks from the date of this Petition being allowed:

I. BEFORE THE CHIEF METROPOLITAN
 MAGISTRATE AT MULUND
 POLICE CASE (PW) NO. 151 OF 2019
 IN
 F.I.R NO. 51 OF 2018
 (Filed u/s. 406 and 420 r/w. sec. 34 of the Indian Penal
 Code, 1860)

Mulund Police Station State of Maharashtra)
 (Complainant: Mr. Mitesh Thacker)) ...Complainant
 Versus

i. Sudhir Jayantilal Undevia)
ii. Amit Lalitchandra Shah)
iii. Manoj Chandrakant Vithalani) ...Accused

II. BEFORE THE CHIEF METROPOLITAN
 MAGISTRATE, AT MULUND
 SUMMONS CASES (SS AND SS) NO. 410 OF 2019
 (Filed u/s. sec. 138 of the Negotiable Instruments Act,
 1881)

Mitesh Thacker) ...Complainant
Versus
i. Bueno Insta Pizza Pvt. Ltd.)
ii. Manoj Chandrakant Vithalani)
iii. Sudhir Jayantilal Undevia)
iv. Amit Lalitchandra Shah)...Respondent/s

III. BEFORE THE CHIEF METROPOLITAN
 MAGISTRATE, AT MULUND
 CASE NO. 329 OF 2019
 (Filed u/s. sec. 138 of the Negotiable Instruments Act,
 1881)

Mitesh Thacker)...Complainant
Versus
i. Bueno Insta Pizza Pvt. Ltd.)
ii. Manoj Chandrakant Vithalani)
iii. Sudhir Jayantilal Undevia)
iv. Amit Lalitchandra Shah)...Respondent/s

IV. BEFORE THE CHIEF METROPOLITAN
 MAGISTRATE AT MULUND
 CASES (SS AND SS) NO. 284 OF 2019
 (Filed u/s. sec. 138 of the Negotiable Instruments Act,
 1881)

Mitesh Kantilal Thacker) ...Complainant
Versus
i. Bueno Insta Pizza Pvt. Ltd.)
ii. Manoj Chandrakant Vithalani)
iii. Sudhir Jayantilal Undevia)
iv. Amit Lalitchandra Shah)...Respondent/s

V. *BEFORE THE CHIEF METROPOLITAN
MAGISTRATE, AT SECUNDRABAD
CASE NO. 2700 OF 2019
(Filed u/s. sec. 138 of the Negotiable Instruments Act,
1881)*

Nilesh Kantilal Thacker) ...Complainant
Versus

i. Bueno Insta Pizza Pvt. Ltd.)
ii. Manoj Chandrakant Vithalani)
iii. Sudhir Jayantilal Undevia)
iv. Amit Lalitchandra Shah)...Respondent/s

5. *Parties agree that Petitioner No.1 on behalf of himself and Petitioner Nos. 2, 3 and the Company has agreed to pay a total sum of Rs.1,75,00,000/-(Rupees One Crore Seventy five lakh only) inclusive of taxes, if any, as a one-time full and final settlement of all claims of Respondent No. 2, Mr. Nilesh Thacker and Mrs. Hansa Thacker in the manner, more particularly as setout herein below:*

Sr. No.	Date of DD	DD No.	Bank Details	Party Name	Amount
1.	04.10.2021	050937	HDFC Bank	Mitesh Kantilal Thacker	Rs.68,50,000/-
2.	04.10.2021	050935	HDFC Bank	Nilesh Thacker	Rs.1,03,00,000/-
3.	04.10.2021	050936	HDFC Bank	Hansa Thacker	Rs.3,50,000/-
	TOTAL				Rs. 1,75,00,000/-

*The photocopy of the aforesaid demand drafts are annexed hereto as **Exhibits “A” & “B”**.*

- 6. The Petitioners have handover the original Pay Order to our common acquaintance Mr. Yash Khara (having Aadhaar Card No. 6213 5507 5452) at the time of filing of the captioned Petition/Application accompanied by the Respondent No.2's Affidavit in Support, thereof. The Petitioners further agree and undertake to instruct Mr. Khara to hand over the same to the Respondent No. 2 when the order of the Hon'ble Court allowing the same is uploaded on the website of the High Court.*
- 7. The Parties hereto agree and acknowledge that on, execution and compliance of these Consent Terms and receipt of the abovementioned pay orders, they have no other claims against each other and undertake not to make any further claims against each other in future. The Parties withdraw all allegations/complaints against each other before every person and/or organization and/or association/body/authority and/or Court, forthwith.*
- 8. The Parties further undertake to keep the terms of this settlement confidential and will not publish and/or circulate the same in any form to unrelated third parties except when required by any statutory authority, court and/or government body.*
- 9. The Parties hereto hereby confirm that the present Consent Terms are executed out of their own free will and without any coercion or undue influence. The contents of this document have been read over and explained to the Parties in English language and they have understood, the extent, import and purport of the same.*

10. *In view of the settlement arrived at between the Parties, they have agreed that the aforesaid Petition be allowed without costs.”*

4. The Respondent No.2 has also tendered consent affidavit. The Respondent No.2 has stated in paragraph Nos.2 to 8 as under :

- “2. In 2016 I had entered into a business arrangement with Mr. Amit Shah, Manoj Vithalani and Sudhir Undevia, for which, I had made payments to the above-mentioned persons, but due to certain misunderstandings, the business arrangements as envisaged could not be acted upon by the parties.*
- 3. It was in this background that, I filed a complaint with the police which came to be registered as FIR No. 51 of 2018 against the above-mentioned persons.*
- 4. Now I have realized that there was lot of miscommunication and misunderstanding between me and the abovementioned persons, hence the FIR came to be registered. Several other complaints were filed interse, by and between the parties in relation and connection to the same business transaction. Recently we have negotiated through common friends and sorted out all the differences and the above-mentioned persons have agreed to amicably resolve all our disputes and differences. The Petitioner has deposited demand draft Nos. 050937, 050935 and 050936 dated 4th October, 2021 drawn on HDFC Bank of amounts of 68,50,000/-, 1,03,00,000/- and 3,50,000 in favour of Mitesh Kantilal*

Thacker, Nilesh Thacker and Hansa Thacker of the amounts agreed to be paid to me with a common acquaintance i.e. Mr. Yash Khara at the time of filing of the present petition. A copy of the Aadhaar card of Mr. Yash Khara is annexed hereto and marked as Exhibit "A". A copy of the draft of the Consent Terms and the demand draft is annexed hereto and marked as Exhibit "B", "C" & "D" Colly.

- 5. As my grievance was only limited to the repayment of the amount, I have no intention to further pursue the case which is registered as FIR No. 51 of 2018 with the Mulund police station.*
- 6. In the facts and circumstances, I request this Hon'ble Court that the FIR No. 51 of 2018 registered with Mulund Police Station at my instance be quashed and the case no. PW/151/2019 pending before the Ld. Metropolitan Magistrate, at Mulund, Mumbai be also quashed.*
- 7. I have agreed to enter into consent terms with the abovementioned persons which will be filed before this Hon'ble Court at the time of hearing and subject to the petition being allowed and the order being uploaded on the website of the Hon'ble High Court, the Demand Drafts of the agreed amounts will be handed over to me by Mr. Yash Khara. A draft of the consent terms along with the photocopy of the Demand Drafts is annexed hereto as Exhibit 'B' and Exhibit 'C' & 'D' respectively.*
- 8. I have 'No Objection', if this Hon'ble Court quashes the FIR No. 51 of 2018 registered with the Mulund Police Station as all the issues have been sorted out and I do not want to pursue the said complaint any further."*

5. We have perused the contents of the F.I.R. The F.I.R. discloses a commercial transaction. The fact situation stated in the F.I.R. and the request of quashing of F.I.R. by consent falls within the parameters laid down by the Hon'ble Apex Court in the case of *Gian Singh Vs. State of Punjab*¹, wherein the Hon'ble Supreme Court has held that the High Court can quash criminal proceedings by consent, wherein the offence does not have impact on the society and it arises from the commercial transaction between the parties. Taking into account the consent terms which seek to resolve all their pending disputes as a matter of settlement, we find that no purpose will be served by keeping the F.I.R. and the proceedings pending, which will needlessly harass all the parties.

6. In the light of this position, the consent terms are taken on record accepting the undertaking stated therein and in the light of the Affidavit filed by the Respondent No.2 the Writ Petition is allowed.

7. The F.I.R. No. 51 of 2018 dated 5th February, 2018, Chargesheet filed by Mulund Police Station, Mumbai, and the case No.151 of 2019 pending before the Metropolitan Magistrate Court, at Mulund, Mumbai are quashed and set aside.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

¹ (2012) 10 Supreme Court Cases 303.