

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3897 OF 2019

Hayat Ahmed Asir Ahmed Ansari
and another

.... Petitioners

Versus

The State of Maharashtra
and others

.... Respondents

....

Mr. Anil Lalla, Advocate a/w. Aanchal Lalla, Aditya Singh, Shiwangi Chamatia i/b. Lalla & Lalla for the Petitioners.

Ms. A.S. Pai, Public Prosecutor for Respondent No.1 -State.

Mr. Ganesh S. Vaidya, Advocate for Respondent Nos.2 & 3.

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

DATE : 17 NOVEMBER 2021

P.C.

The Petitioners have approached this Court for quashing of the FIR registered against them vide MECR No.393/2017 at Kurar Village police station, Mumbai for commission of offences punishable under Sections 420, 423, 467, 471, 506 read with 120-B of the Indian Penal Code. The FIR was lodged at the instance of Respondent No.2.

2. Though, initially prayer was for quashing of the FIR by consent of the parties, subsequently the prayer was amended and quashing of the FIR was sought on merits of the matter. The prayer was amended pursuant to the order dated 15th February 2021.

3. Heard Shri Anil Lalla, the learned counsel for the Petitioners, Smt. A.S. Pai, the learned Public Prosecutor for the State and Shri Ganesh Vaidya, learned counsel for Respondents No.2 & 3.

4. The FIR lodged at the instance of Respondent No.2 mentions that the first informant was in the business of construction. He was carrying on that through his Partnership Firm in the name of "Mass Enclave" in which Respondent No.3 was the other partner. On 8th July 2015 a joint-venture agreement was entered into between Mass Enclave, Nirman Realtors and Developers Limited and Siddharth Housing Private Limited in respect of development of a slum situated on Azad Link Road, Sanjay Nagar, Malad by name Shri Azaad Co-operative Housing Society Limited. The responsibility for development was taken by M/s. Mass Enclave and in turn M/s. Mass Enclave was to get certain carpet area and other area for shops. The documents regarding the agreement with the slum dwellers and SRA were completed by Nirman Realtors and Developers Limited. 194 slum dwellers were given rent to the tune of Rs.1,45,00,000/- by Mass Enclave. Similarly they had also spent Rs.51 Lakhs for registration of joint-venture. They started construction on that plot in the year 2015 and had incurred expenditure to the tune of Rs.6,25,00,000/-.

5. In 2016, both the Petitioners met the informant and expressed their desire to take over the partnership firm of M/s. Mass Enclave. The informant along with his Partner-Respondent No.3 Haji Gulam Nabhi Shaikh had discussion with Petitioner No.1 Hayat

Ahmed. It was decided that the total expenditure incurred by the partnership firm as well as 6000 sq. ft. of area was to be given to the informant and his partner-Respondent No.3. According to the informant Petitioner No.1 agreed to those terms. On 20th December 2016, Petitioner No.1 and Respondents No.2 & 3 handed over the agreement for paying the stamp duty and for registration to Petitioner No.1. At that time the names of the new partners were left blank. Petitioner No.1 had told Respondent No.2-informant that he would be informed after a date was given for registration. In spite of that the agreement was not registered. After that Petitioner No.1 paid total Rs.56,79,000/- to Respondent No.2-informant and Respondent No.3. Petitioner No.1 had promised that rest of the amount would be paid by June, 2017 but it was not paid. Respondent No.2-informant came to know that the Petitioners had inserted their names in the blank spaces left for names of the new partners. In May, 2017, the informant made enquiries with a person who was present at the site. At that time he was shown the agreement which mentioned the names of the Petitioners and Respondents No.2 & 3 in respect of that agreement. The stamp paper was dated 2nd December 2016 and the agreement was dated 1st December 2016. It is the case of the informant that some of the papers from the agreement were changed and the signatures of the informant and Respondent No.3 on that agreement were forged. That forged agreement was presented before the Registrar of Firms for registration. Thus, according to the first informant the forged documents were prepared by the Petitioners and

they had cheated the first informant. On the basis of these allegations, the first informant made a grievance before the Magistrate. The Metropolitan Magistrate, 67th Court, Borivali, Mumbai vide his order dated 25th September 2017 was pleased to pass an order under Section 156(3) of the Code of Criminal Procedure, pursuant to which the aforementioned FIR was lodged.

6. Shri Lalla, the learned counsel for the Petitioners submitted that Respondents No.2 & 3 had filed S.C. Suit No.3636/2017 in the City Civil Court at Dindoshi, Goregaon against the Petitioners and others in which consent terms were filed and the suit was decreed in terms of the consent terms. Shri Lalla submitted that the consent terms recorded that Respondents No.2 & 3 had agreed, declared and confirmed that the retirement-cum-incoming partnership deed dated 1st December 2016 was legal, valid and subsisting and they had withdrawn all the objections and complaints made in respect of the said deed against the Petitioners unconditionally. Respondents No.2 & 3 had also agreed to cancel and/or cause the agreement for sale of flats to be cancelled in respect of nine persons. Therefore, the FIR against the Petitioners could not survive in view of the consent terms. He submitted that the Petitioners had paid sufficient amount to Respondents No.2 & 3. The document in respect of the partnership firm was duly executed and no offence was committed. In view of the consent terms, no offence was made out. In view of the consent terms, continuation of the FIR and consequent proceedings would amount to

abuse of process of law and, therefore, it was liable to be quashed.

7. On the other hand, the learned counsel for Respondents No.2 & 3 submitted that the concession given for declaration that the partnership deed dated 1st December 2016 was legal; was based on the assumption that the consent terms would be complied with. The Petitioners had not complied with the consent terms. They had not shown willingness to indemnify some of the flat purchasers and, therefore, the consent terms had no effect on the pending FIR. According to the learned counsel for Respondents No.2 & 3, in any case, the FIR was lodged on 11th October 2017 and before the consent terms were entered into on 3rd November 2018. The offence was not wiped out because of the consent terms. Moreover the allegations were in respect of forgery of signatures. The document was used for registration before the Registrar of Firms. The forged document was actually used. This needed detailed investigation and trial.

8. We have considered these submissions. It is obvious that the informant and Respondent No.3 are not consenting for quashing of the FIR lodged against the Petitioners. At this stage, the first informant has raised a contention that the consent terms were not complied with by the Petitioners and, therefore, it had no effect on the pending FIR. Initially, this Petition was filed for quashing of the FIR by consent, but, subsequently a prayer was made for quashing of the FIR on merits. Therefore, we have examined the averments in the FIR to find out whether any offence is made out. Careful reading of

the FIR does show that there are allegations of forgery of the informant's and Respondent No.3's signatures. There are allegations of using that forged documents for wrongful gains. Therefore, the FIR has sufficiently mentioned ingredients of the offence.

9. The question is what is the effect of the consent terms filed in the City Civil Court as referred hereinabove. For that purpose clauses (3) and (6) of the consent terms are important. Clause (3) reads thus :

“(3) Pursuant to the settlement between the parties herein it is Agreed, Declared and Confirmed by the Plaintiffs particularly the Plaintiff Nos.2 & 3 i.e. Mohd. Nihal and Haji Gulab Nabhi that the said Retirement-cum-Incoming Partnership Deed dated 1st December 2016 is legal, valid and subsisting and that the said erstwhile Partners Plaintiff Nos.2 & 3 do hereby withdraw all their objections and complaints made in respect of the said Deed against Defendant Nos.2 & 3 unconditionally and forever.”

. Clause (6) mentions that Respondents No.2 & 3 herein (plaintiffs in the Suit) had confirmed that it would be their responsibility and liability to cancel and cause the agreements for sale of flats to be cancelled by causing the necessary deeds of cancellation to be executed by nine named persons within a period of 90 days of execution of the consent terms. The clause mentions nine such persons and various amounts against their names. These amounts are

between Rs.35 Lakhs to Rs.60 Lakhs each except the person at Sr. No.9. Thus, total amount mentioned against those names is much more than the amount which was paid by the Petitioners to Respondents No.2 & 3 i.e. Rs.56,79,000/-. Therefore, it does not stand to reason that Respondents No.2 & 3 would take up on themselves to pay huge amount in return of a very small portion. According to the first informant they had also spent Rs.6,25,00,000/-. It is not possible to believe that Respondents No.2 & 3 would give up their entire right in the project by allowing the Petitioners to take over the partnership firm; without deriving any monetary benefits and in fact suffering huge losses in the process. The Petitioners are relying on interpretation of clauses of the consent terms. However the informant has refused to give consent for quashing of this FIR. Therefore, we have considered the matter on merits.

PRADIPKUMAR
PRAKASHRAO
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10. We find that the offence is made out in the FIR. Therefore, we do not find that it is a fit case where the FIR can be quashed. The Petition is, therefore, dismissed.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)