

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

CRIMINAL WRIT PETITION NO.4274 OF 2019

Ashraf Matheen s/o. Ahmed Abdul Hafees]
Age 50 years, Occ : Businessman,]
R/o. Patigadda, Near Piagah Palace]
Flat No.301, AK Towers,]
Hyderabad : 500016, Telagana]..... Petitioner.

Versus

1] The State of Maharashtra]
(At the instance of Tardeo Police Station]
Vide CR No.304 of 2018]
2] Nishant Bhojwani]
Age 58 years,]
R/o. Imperial Towers, Plot No.1202]
Tardeo, Mumbai – 34.]..... Respondents.

Mr. Mithilesh Mishra i/by Mr. Yuvraj J Bhange Patil for the Petitioner.
Dr. F R Shaikh, APP for Respondent No.1/State.
Mr. Aditya Mithe for Respondent No.2.
Respondent No.2 present in Court.

**CORAM : S. S. SHINDE,
MANISH PITALE, JJ**
Reserved on : 16th March 2021
Pronounced on: 19th March 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 The Petitioner has filed this Writ Petition for the following
substantial relief :-

- (i) This Hon'ble Court be pleased to quash and set aside the F.I.R. bearing C.R. No.304/2018 registered with Tardeo Police Station, Mumbai, in the interest of justice.

3 It is submitted that the 2nd Respondent i.e. the First Informant is engaged in business of chemicals at Airoli. The 2nd Respondent met one Sai Prasad for discussions relating to business. The said Sai Prasad informed the 2nd Respondent that he can make the arrangements to supply the industrial mix solvents at a cheap rate. The said Sai Prasad also informed the 2nd Respondent that he is a partner in Shalechem General Trading along with one Ashraf Mateen i.e. the Petitioner herein. The 2nd Respondent told the said Sai Prasad to send 5 containers of industrial mix solvents. The said Sai Prasad informed the 2nd Respondent to send advance amount. Accordingly the 2nd Respondent through one of his companies Dena Bank Accounts transferred 10248 Dollars to Bank of Baroda account of Shalechem General Trading on 18/04/2017. Thereafter the 2nd Respondent further transferred an amount of 23912 dollars in the account of the said Shalechem General Trading. The 2nd Respondent inquired regarding shipment of material, however, he did not receive the goods. Thereafter the 2nd Respondent came to know that the said company is in the name of Petitioner's wife viz. Azma Matheen. The Petitioner and Sai Prasad informed the 2nd Respondent about returning his money, if the goods

were not delivered. When the 2nd Respondent inquired with the shipping company viz. Baltic Lines about the Bill of Lading sent by the Petitioner and the said Sai Prasad, it was informed to him that the said bill of lading does not belong to their company. Ultimately the 2nd Respondent lodged the FIR bearing CR No.304 of 2018 dated 08/12/2018 with Tardeo Police Station, Mumbai for the offences punishable under Sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code against the Petitioner and the said Sai Prasad.

4 It is submitted by the learned counsel appearing for the Petitioner that thereafter the Petitioner applied for anticipatory bail before this Court, and during the course of hearing of the said bail application, a proposal for amicable settlement was sent to the advocate for Respondent No.2 which was accepted by the 2nd Respondent. It is submitted that both the parties agreed and arrived at amicable settlement and filed consent terms before this Court. It is also submitted that, the 2nd Respondent has been compensated for the actual loss which had occurred to him. It is also submitted that the entire dispute has come to an end by way of amicable settlement.

5 This matter was on board on 16/03/2021. The 2nd Respondent was present. When we interacted with the 2nd Respondent, he stated that it is his voluntary act to enter into the settlement and execute the Consent Terms without any coercion and pressure. He further stated that he does not wish to

continue with the proceedings filed against the Petitioner and has no objection to quash and set aside the impugned FIR.

6 The 2nd Respondent has filed his affidavit dated 12th March 2021 in this Writ Petition which is taken on record and marked as “X” for identification.

In paragraphs 4 to 6 of his affidavit, the 2nd Respondent has stated thus :-

“4 I say that during the pendency of the above Anticipatory Bail Application No.728 of 2019, the parties held mutual discussions and agreed to amicably resolve the disputes which form the subject matter of the FIR. Accordingly, on March 28, 2019, the Petitioner and I executed a Consent Terms, whereby the parties, inter alia, agreed to settle their disputes (forming subject matter of the FIR), upon payment of an amount of Rs.20,00,000/- by the Petitioner to the said M/s. Goldie Lab Chem. A copy of the said Consent Terms was presented by the Advocates representing both the parties before this Hon’ble Court during the course of a hearing in the above Anticipatory Bail Application. I say that upon seeing a copy of the said Consent Terms, this Hon’ble Court was pleased to allow the said Anticipatory Bail Application in terms of the said Consent Terms. A copy of this order dated March 28, 2019, passed by this Hon’ble Court is annexed to the Writ Petition at Exhibit “B”.

5 I say that the Petitioner has complied with the said

Consent Terms and has paid the entire amount of Rs.20,00,000/- to the said M/s. Goldie Lab Chem as correctly stated in the said Writ Petition and I acknowledge the receipt of the above amount.

6 In view of the aforesaid facts and circumstances and in view of the Undertaking given by me in the above Consent Terms, I hereby give my consent to the quashing of the above FIR No.304 of 2018 dated December 8, 2018 registered by Tardeo Police Station, Mumbai against all Accused named therein.”

7 The learned counsel for both the parties submit that, both the parties have voluntarily agreed to settle the disputes and differences between them, and there is no coercion, undue influence or force upon them for arriving at the settlement.

8 In view of settlement arrived at between the parties, no fruitful purpose will be served by continuing the further investigation in the impugned FIR No.304 of 2018 filed by Respondent No.2 against the Petitioner with Tardeo Police Station and the said FIR No.304 of 2018 is required to be quashed and set aside qua the Petitioner herein.

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 the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Petitioner in the impugned FIR. The further continuation of proceedings qua the Petitioner would tantamount to abuse of the process of the Court, since the 2nd Respondent by way of filing her affidavit has clearly stated that, he is not interested to pursue the allegations made against the Petitioner

herein in the impugned FIR, and the chances of conviction of the Petitioner would be bleak and remote.

11 It is required to be noted that the 2nd Respondent has lodged impugned FIR against the Petitioner herein and the said Sai Prasad, however, the present Petition is filed by the Petitioner herein only for quashing the said FIR. We, therefore, deem it appropriate to quash and set aside the impugned FIR qua the Petitioner herein.

12 It is pertinent to note at this stage that though the parties herein have resolved/settled their dispute between them and approached this Court for quashing of the FIR lodged by the 2nd Respondent against the Petitioner, we deem it appropriate to impose costs of Rs.50,000/- (Rupees Fifty Thousand only) on the Petitioner and Respondent No.2. Accordingly we direct the Petitioner to deposit costs of Rs.50,000/- (Rupees Fifty Thousand only) and, Respondent No.2 to deposit costs of Rs.25,000/- (Rupees Twenty Five Thousand only) with the Children's Aid Society, Mumbai in the following manner. In turn the Children's Aid Society, Mumbai shall transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai. Bank Account details for depositing the costs 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

13 For the reasons stated herein above, and in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the Writ Petition deserves to be allowed subject to depositing the aforesaid amounts by the Petitioner and the 2nd Respondent in the aforesaid account. The impugned FIR bearing CR No.304 of 2018 dated 08/12/2018 registered with Tardeo Police Station for the offences punishable under Sections 420, 465, 467, 468, 471 and 34 of the Indian Penal is hereby quashed and set aside qua the Petitioner herein, subject to Petitioner depositing Rs.50,000/-/- (Rupees Fifty Thousand only) and the 2nd Respondent depositing Rs.25,000/- (Rupees Twenty Five Thousand only) within two weeks from today.

14 Payment of aforesaid costs is a condition precedent for allowing this Writ Petition and this order will take effect after depositing the amount of costs by the Petitioner.

15 Rule is made absolute to the above extent and the Criminal Writ
Petition stands disposed of accordingly.

16 The parties shall strictly abide by the mutual obligations as per
the Consent Terms.

17 List the Petition on 05/04/2021 under caption "For Compliance"
of deposit of costs.

[MANISH PITALE, J]

[S. S. SHINDE , J]