

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

CRIMINAL WRIT PETITION NO.5452 OF 2019

Amrutlal Kanji Nisar

.... Petitioner

versus

State of Maharashtra & Anr.

.... Respondents

**WITH
CRIMINAL WRIT PETITION NO.5456 OF 2019**

Mukesh Punjabhai Patel & Anr.

.... Petitioners

versus

State of Maharashtra & Anr.

.... Respondents

**WITH
CRIMINAL WRIT PETITION NO.5457 OF 2019**

Lotus Urban Spaces Pvt. Ltd.

.... Petitioner

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr.R.D. Soni i/b. Meena Sharma, Advocate for Petitioner.
- Mr.Rupesh Jaiswal i/b. Gajendra Jain, Advocate for Respondent No.2.
- Ms.A.S. Pai, PP a/w Ms. S. D. Shinde a/w Mr.K.V. Saste, APP for State/Respondent.
- Petitioners Mr.Amrut Nisar, Mr.Kirit Patel, Mr.Mukesh Patel and Mr.Santosh Karnawat, are present before the Court.

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SARANG V. KOTWAL, J.

DATE : 26 NOVEMBER 2021

P.C. :

. These three Writ Petitions seek to quash the same FIR and the Petitioners in these three Petitions are partners of one partnership firm and the subject matter being identical, these Petitions are taken up together for consideration.

2. The reason given for quashing of the FIR is that subsequent to the filing of the FIR, the parties have amicably resolved the dispute and that the Respondent No.2, the informant has filed his affidavit on consent. Learned counsel relied upon decision of the Apex Court in case of *Gian Singh Vs. State of Punjab and another*¹, more particularly the following passage therefrom;

“The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be

1 (2012) 10 Supreme Court Cases 303

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. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on 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 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 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The learned counsel states that in view of consent and compromise and the law as above, the FIR can be quashed. In light of these submissions, we have examined the facts of the case.

3. It is the case of Respondent No.2 that the Petitioners are the partners of one S.O.L. Developers. The partnership firm had a construction scheme at village Moshi, Taluka Haveli, District Pune. According to Respondent No.2, the Respondent No.2 had entered into an investors agreement and certain amounts were also paid in respect of the possession of the flats. According to Respondent No.2 when he visited the site office on 15 August 2018, the Petitioners refused to execute the agreement. Thereafter the Respondent No.2 deposited Rs.1,89,800/-. Yet the flat was not given. It is alleged that right from the inception, the Petitioners had intention to cheat and

filed the FIR under section 420, 506 r/w 34 of the Indian Penal Code.

4. The affidavit-in-reply is filed on behalf of Respondent No.2, in which Respondent No.2 has stated as under;

“2. I say and submit that, the matter is amicably settled between the petitioner and the respondent No.2 with the help of respectable persons from the community. The settlement is from free will. There is no any pressure or coercion or threat.

3. I say and submit that, it is settled between the parties the respondent No.2/Javaharlal Pannalal Jain has agreed to pay consideration balance amount of Rs.2,87,500/- vide cheque bearing No.000040 dated 19.02.2021 and to pay Service Tax amount of Rs.72,682/- vide cheque bearing No.000042 dated 19.02.2021 drawn with the Bombay Mercantile Bank, Cidco Branch, Aurangabad in favour of the S.O.L. Developers and it is accordingly issued from the date of signing this affidavit and the petitioner and their partners will execute the sale deed and hand over the peaceful vacant possession of the subject flat in favour of the respondent No.2 subject to realisation of said cheques amount after a period of Ten Days from the date of signing this affidavit.”

5. The learned counsel for Petitioners on instructions of the Petitioners present in the Court, who are identified by the learned counsel for the Petitioners, states that pursuant to the settlement

arrived at, the possession letter in respect of flat No.D-705 is issued and the Respondent No.2 has also received the possession. Statement made on instructions is accepted. The affidavit of the Respondent also refers to the commitment of the Petitioners for executing the sale deed. Learned counsel for the Petitioners on instructions states that the sale deed is also executed and the same is registered.

6. Learned counsel for the Petitioners states that the copy of sale deed which is executed, will be placed on record.

7. In light of the affidavit filed and the statement made by the learned counsel for the Petitioner on instruction, it is clear that the dispute stands resolved between the parties.

8. The dispute that led to the FIR refers from the perusal of it, is a commercial dispute, where the amount was paid for purchase of flat and the possession of the flat was not given and the sale deed was not executed. This dispute does not have a large scale repercussion on the society.

9. In light of law laid down by the Apex Court as above, the Writ Petitions are allowed and the FIR bearing No.I-659 of 2019, dated 11 October 2019 registered with Bhosari Police station, is quashed and set aside qua the Petitioners. The Petitioners will pay

Rs.10,000/- each to the Police Welfare Fund, Axis Bank Account No.465010100008693, IFSC Code UTIB0000465, Lamington Road branch, Mumbai, Maharashtra, within a period of four weeks. This order passed today is conditional upon payment of the costs.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)