

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

WRIT PETITION NO. 4571 OF 2018

1. Mr. Nilesh Kudalkar
Age : 47 years, Occu. : Business
R/o. Santosh CHS, Flat No.12, 46/B,
Chembur (East), Mumbai – 400 071.

...Petitioner

Versus

1. State of Maharashtra
(Through Sr. P.I. Kanjurmarg Police
Station, Dist. Mumbai).
2. Mr. Pankaj Kantilal Shah,
Age : 52 years, Occupation : Business
R/At : G/5, Mangalkunj, Jambdi Galli,
Borivali (West), Mumbai – 400 092.

...Respondents

Mr. Kuldeep Patil, for the Applicants.
Mrs. S. D. Shinde, APP for the State/Respondent no.1.
Mr. Mehul Shah, 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. This petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure (“the Code”) is instituted to quash and set aside criminal case being

C.C. No.504/PW/2019, pending on the file of Metropolitan Magistrate, 53rd Court, Mumbai, arising out of FIR No.115 of 2018, registered with Kanjurmarg Police Station, for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), on the basis of the settlement arrived at between the petitioner and Mr. Pankaj Shah – Respondent no.2, the first informant.

3. Respondent no.2 lodged a report against the petitioner with the allegations that in the year 2008, the Kings Empire Heights Pvt. Ltd. was formed with four Directors including petitioner Mr. Nilesh Kudalkar. A joint Development Agreement was executed to redevelop Anandham Co-operative Society, Nahur. While disposing of the flats in the said society, the petitioner in connivance with the Sai Construction Pvt. Ltd., sold the flats at a discounted price to the prejudice of respondent no.2, and the proceeds of the flat sold to Mr. Sunil Karia were appropriated to the personal account of the petitioner and thereby the petitioner committed cheating and criminal breach of trust.

4. Mr. Kuldeep Patil, the learned Counsel for the petitioner and Mr. Mehul Shah, the learned Counsel for respondent no.2 make a joint statement that during the pendency of this

petition, the parties have amicably resolved the dispute. Pursuant thereto Consent Terms have been executed before the Arbitral Tribunal comprising of Advocate Mr. Cyrus Bharucha, the Sole Arbitrator. A copy of the Consent Terms is annexed at page nos.326 to 344. Mr. Pankaj Shah, respondent no.2, has also sworn an Affidavit.

5. Mr. Pankaj Shah appeared before the Court. He was identified by Mr. Mehul Shah, the learned Counsel for respondent no.2. Mr. Pankaj Shah submitted before the Court that he has decided to settle the dispute with the petitioner and executed the Consent Terms on his own volition. There is no coercion or duress. He submitted that the dispute has been amicably resolved and, therefore, he has filed the affidavit giving no objection to quash the FIR No.115 of 2018 and the consequent proceedings arising therefrom. Paragraphs 1 to 4 of the Affidavit read as under:

“1. Due to misunderstanding some disputes and differences arisen between me and the accused no.1 filed a complaint against Mr. Nilesh Kudalkar for illegal selling of flats in the redevelopment project of Anandham Co-operative Housing Society, Nahur and for siphoning off the funds. I filed a complaint/case against 1 Mr. Nilesh Laxmikant Kudalkar, 2. Mr. Amit Wadhvani which is registered as FIR No.115 of 2018 on 09.07.2018 with Kanjurmarg Police Station under section 420, 406 and 34 of the Indian Penal Code, (Hereinafter referred to as “the said case”).

2. I say that now I do not wish to pursue the said complaint/case filed by me as I have settled all disputes and differences with them and now wish to live in peace and harmony. I have entered into consent terms with Mr. Nilesh

Kudalkar 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 paid the entire payment due to him as more particularly set out in the said consent terms dated 28/09/2020 and further have no grievances against him of any nature whatsoever. I therefore hereby declare and confirm that the allegations made by me in the complaint dated 10.06.2017 and statement given in the FIR against Mr. Nilesh Laxmikant Kudalkar stands unconditionally withdrawn.

3. I say that I am ready and willing to give and do hereby give any "No Objection" for quashing of the said FIR bearing no.115 of 2018 before the Hon'ble High Court as I have no surviving cause of action to pursue the said case against Mr. Nilesh Laxmikant Kudalkar.

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."

6. In the backdrop of the aforesaid submissions, statements in the Affidavit and the Consent Terms, we have perused the report Under Section 173 and the documents annexed with it. Evidently, the dispute arose between the Directors of the Company, Kings Empower Heights Pvt. Ltd.. It would be contextually relevant to note that in the wake of the dispute, multiple proceedings including prosecutions were initiated. The petitioner herein also had lodged FIR No.115 of 2018, against respondent no.2 herein and two other Directors of the said Company, which is the subject matter of Criminal Application No.500 of 2020. [The said application came to be allowed by a separate order passed today.] Eventually, the parties have settled the dispute in the arbitration proceedings.

7. An 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.”

8. The aforesaid pronouncement applies with equal force to the facts of the instant case. The offences arose out of a commercial dispute. The case has predominantly a civil flavour. The parties have buried the hatchet and put an end to the dispute in its entirety. In view of the settlement between the parties the likelihood of the prosecution ending in a conviction is extremely remote. Thus no fruitful purpose would be served by keeping the prosecution alive. It would amount to abuse of

¹2012 (10) SCC 303.

the process of the Court. It would also cause grave prejudice to the parties.

9. For the foregoing reason to secure the ends of justice and to prevent the abuse of the process of the Court, we are persuaded to allow the petition.

10. Hence the following order:

: ORDER :

- (i) The petition stands allowed.
- (ii) Criminal case being C.C. No.504/PW/2019, pending on the file of the learned Metropolitan Magistrate, 53rd Court, Mumbai, arising out of FIR bearing No.115 of 2018, registered with Kanjurmarg Police Station, stands quashed and set aside.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]