

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1555 OF 2019

Jaswantraai Rugnath Doshi
and another

.... Applicants

Versus

Sushila Swarup Dhariwal and another

.... Respondents

....

Mr. Shailesh Kantharia, Advocate for the Applicants.

Ms. Divya Parab, Advocate i/b. Nikhil Panchal, for Respondent No.1.

Ms. S.D. Shinde, APP for Respondent No.2-State.

....

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

DATE : 14 DECEMBER 2021

P.C.

Heard the learned counsel for the parties. The application is taken up for disposal by consent.

2. The Applicant has filed this application under Section 482 of the Code of Criminal Procedure for the following relief :

“(b) That this Hon’ble Court be pleased to quash and set aside C.C. No.230/PW/2008 pending on the file of Ld. Metropolitan Magistrate, 40th Court, Girgaon, Mumbai arising out of C.R. No.442 of 1997 registered with Gamdevi Police Station, Mumbai for offence punishable u/s. 465, 467, 468, 471, 454, 457, 448 r/w. 34

of Indian Penal Code on any such terms and condition as this Hon'ble Court may deem fit and proper."

3. The learned counsel for the Applicants and the learned counsel for Respondent No.1 state that the parties have resolved their dispute which was a commercial dispute and the FIR be quashed by consent of the parties.

4. On 21 January 2020, after hearing the parties, the Division Bench passed the following order :

"1] The applicants and respondent No.1 are jointly requesting for quashing of FIR in C.C. No. 230/PW/2008 under sections 465, 467, 468, 471, 454, 457, 448 read with 34 of IPC.

2] It appears that in High Court Suit No. 1167 of 2007 later on registered as Suit No. 4908 of 2007 in City Civil Court, the consent terms were tendered on 18th January 2019 and the same has been accepted. As per those consent terms, criminal case is also to be withdrawn.

3] Accordingly, the complainant-respondent No.1 has tendered separate affidavit today. It is taken on record.

4] Learned APP is seeking short time to verify the antecedents of parties.

5] List on 4th February 2020. Till then, stay of further proceedings before the Trial Court."

5. Nothing is placed on record as regards any adverse antecedents.

6. The statements in the FIR show that the dispute was regarding purchase of a flat. It was contended that Respondent No.1-complainant was the owner of that flat. It was alleged that the Applicants were trying to use fraudulent power of attorney purportedly to be signed by Respondent No.1 and her husband. Respondent No.1 stated that the flat was occupied by the husband of Applicant No.2. On these allegations that Applicants No.1 and 2 jointly created rights in their favour in respect of the flat which was owned by Respondent No.1, a Civil Suit was also filed by Applicant No.2 and others against Respondent No.1 and others. In this civil suit, the consent terms were executed which are referred to by the Division Bench in the order dated 21 January 2020. In addition, the Respondent No.1 has filed an affidavit stating that in view of the consent terms, Respondent No.1 has no objection for quashing the criminal proceedings as against the Applicants.

7. The learned counsel for the Applicants submitted that in the consent terms the Plaintiffs in the suit have agreed that the Respondent No.1 and others are the owners of the property and the power of attorney is *void ab initio* and have handed over possession of the flat to Respondent No.1.

8. Considering the nature of the transactions referred to in the FIR, it is clear that the dispute is a commercial dispute. It is informed that the parties are related. In view of the consent terms filed in the Civil Suit and the affidavit filed before us, a case is made out for grant of the relief as prayed for. Accordingly, the application is allowed in terms of prayer clause (b), as reproduced above.

9. The application is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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Date: 2021.12.16
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