

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

CRIMINAL APPLICATION NO. 127 OF 2020

1) Mr. Vinay Thakkar (Chairman))
2) Mr. P.V. Matkar(Secretary))
3) Mr. R.D. Shetty (Treasurer))
4) Ms. Chandra Shetty)
5) Ms. Swati Shah)
6) Smt. Rekha Dave)
7) Mr. Cyril D'Souza)
8) Mr. Hemant Kamdar(Ex.Secretary))
9) Mr. Dhiren Savla(Ex-Treasurer))
10) Mr. Jayesh Chande)
11) Mr. M. Majetia)
12) Ms. Jyoti Gokaran)
13) Mr. Narendra Doshi)
14) Mr. Jagdish Joshi)
All are adults residing at)
Shivram Co-op. Housing Society)
Devi Dayal Road, Mulund, Mumbai.)...Applicants.

Versus

1) The State of Maharashtra)
2) Sr. Inspector of Police)
Mulund Police Station, Mumbai.)
3) Mr. Jatin H. Sotta)
Age -Adult, R/o Flat No. 31,)
Anurag Building, Devi Dayal Road,)
Mulund, Mumbai 400 080.)...Respondents

Ms. Racheeta Dhuru i/b. Mr. P.Y. Shankar, advocate for applicants.

Mr. J.P. Yagnik, A.P.P for the Respondent – State.

Ms. Amruta Athavale, advocate for respondent No. 3.

***CORAM : REVATI MOHITE DERE &
R.N. LADDHA, JJ.***

DATE : 15TH NOVEMBER, 2022.

P.C. :

1. Heard the learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives service on behalf of the respondent Nos.1 and 2-State. Learned Counsel Ms. Amruta Athavale waives service on behalf of the respondent No.3.
3. By this application, preferred under section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashing and setting aside of the FIR, registered vide C.R. No. 3 of 2017 with the Mulund Police Station, Mumbai, for the alleged offences punishable under section 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

4. Quashing is sought on the premise that the parties have amicably settled their dispute.

5. According to the Respondent No. 2(original complainant), the applicants are the Committee Members, holding certain posts in the Managing Committee of the Society. It is alleged by the Respondent No. 2 that the applicants put up a proposal for the re-development of the Society and that some of the members were against for redevelopment of the society. The complainant has further alleged that the applicants prepared forged documents and appointed a builder, accepted money from the said builder and thereafter, misappropriated the said money.

Pursuant thereto, the Respondent No. 3 filed a private complaint, in the Court of the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, being C.C. No. SW/ 8/2017. The learned Magistrate passed an order under

section 156(3) of Cr. P.C. on 1st April, 2017. Pursuant to the said order, the police of the Mulund Police Station registered the aforesaid C.R. alleging the aforesaid offences.

6. It is a matter of record, that the police after investigation, filed a “C” summary report before the concerned Court. The Police in the “C” summary report, had concluded that the dispute between the parties was civil nature and that no offence, as alleged, was disclosed. Thereafter, the respondent No. 3 filed a Protest Petition, which was allowed by the learned Magistrate.

7. During the pendency of the aforesaid case, the parties amicably settled their dispute.

8. The learned Counsel for the Respondent No. 3 has tendered two affidavits of respondent No. 3 i.e. consent affidavit of the respondent No. 3 dated 1st May, 2022 and the additional affidavit dated 17th November, 2022, duly

affirmed before the Notary. In the said consent affidavit, the respondent No. 3 has stated that he has no allegations as against the applicants and that he unconditionally withdraws the allegations made in the complaint, and as such, has no objection for quashing of the said CR, registered as against the applicants. In the additional affidavit, the respondent No. 3 has stated, that he filed the aforesaid complaint as he had grievance against the applicants, since they were redeveloping the society, despite objection. Both the said affidavits are taken on record.

9 The Respondent No.3 is present in person and he reiterates, what is stated in both the affidavits.

10. Learned Counsel for the respondent No. 3 has tendered photocopy of the adhar card of the respondent No. 3, duly attested by him. The same is taken on record.

11. Learned APP states that since during the investigation, the police had come to the conclusion that it was a civil dispute and that no offences were disclosed, and hence, “C” summary was filed, they have no material pertaining to the applicants’ complicity.

12. Considering the aforesaid, the nature of dispute, the amicable settlement between the parties, the affidavits of respondent No. 3, and having regard to the judicial pronouncements of the Apex Court in ***Gian Singh vs. State of Punjab & Anr.***¹ and ***Narinder Singh & Ors. vs. State of Punjab & Anr.***², there is no impediment in allowing the application.

13. The Application is accordingly allowed and the FIR bearing C.R. No. 3 of 2017 registered with the Mulund Police Station, Mulund, Mumbai, and consequently the proceeding arising therefrom, i.e. C.C. No. SW/8/2017 pending before

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

the Metropolitan Magistrate, 27th Court at Mulund, Mumbai and the process issued by the learned Magistrate vide order dated 7th November, 2019 are quashed and set-aside.

14. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

15. All concerned to act on the authenticated copy of this order.

R.N. LADDHA, J.

REVATI MOHITE DERE, J.