IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 496 OF 2020

Girdhar Lohani ...Petitioner
vs.
The State of Maharashtra & Anr. ...Respondents

Ms.Anjali Patil for Petitioner.
Mr.Mahesh Rajput for Respondent No.2.
Ms.M.H. Mhatre, APP for State.
Mr.Deepak Dalvi, IO, PI BKC Police Station present.

CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.

DATED : 13 JANUARY 2022

P.C. :

Heard learned Counsel for the Petitioner, learned APP for the State and learned Counsel appearing for Respondent No.2, Premal Sudhir Shah.

2. The Petitioner is before this court with a prayer of quashment of Report, CR No.178/2019, registered at BKC Police Station against him. Perusal of the copy of Report, CR No.178/2019, placed on record at Exhibit-A, Page 8, show that at the instance of Respondent No.2, Premal Sudhir Shah, this report was lodged against the accused persons, namely, Ajay Gupta, Abhay Gupta, Neeru Gupta and Girdhar Lohani, i.e. the Petitioner before this court, for commission of offences punishable under Sections 409, 420, 504, 506 read with Section 120(B) of IPC. Respondent No.2 submitted in his complaint report that he is running a firm under the

name “Bharat Diamond Bors” and deals in the business of sale, purchase of the diamonds. He is the director of the said company and the other directors are one Urvi Shah, Dina Shah, Sudhir Shah and Premal Shah. It may not be necessary to refer the other facts of the complaint, suffice to say that Respondent No.2 complainant came in contact with a firm, M/s. Shrinath Jewellers, in relation to his business. On 26 December 2018, the Director of Shrinath Jewellers Pvt.Ltd., Ajay Gupta, along with the Petitioner and one employee, Ketan Shah, approached the complainant, purchased the diamonds worth Rs.73,33,920/-. The accused persons assured to make the payment against the deal within three/four months and in spite of repeated contacts, within a span of four months, there was no response from the accused persons. On inquiry, it came to the knowledge of Respondent No.2 that the accused persons had played similar mischief with the other business persons. Respondent No.2 then found that he was subjected to an act of deceive and breach of trust, approached the police station by lodging report against the accused persons, including the Petitioner.

3. Learned Counsel for the Petitioner submitted that Respondent No.2 has filed an affidavit in this court submitting that adding the Petitioner as one of the accused was an act of misunderstanding and whatever be the business transaction within the Petitioner and Respondent No.2 is taken care of by arriving at a Memorandum of Understanding. It is stated in the affidavit in reply that the matter between the complainant and the Petitioner has been amicably settled. It will be useful for our purposes to refer to the statements of Respondent No.2 complainant in the affidavit in reply and it reads thus :

> "11. I say that after the arrest of Mr. Ajay Gupta, the present applicant in the month of November, 2019 came in touch with me stating that he does not have knowledge and is not aware about the dealings of Mr. Ajay Gupta whereby asserting that the present Applicant was not an active part in the said deals and transactions.
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> 12. I say that I have met the present Applicant and the matter has been settled between us amicably and there has been a MOU dated 09/12/2019 between us to which both the parties have agreed.
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> 13. I say that I do not wish to pursue the complaint lodged i.e. FIR being C.R.No. 178 of 2019 registered with BKC Police station against the present applicant.
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> 14. I say that I undertake not to initiate against the present Applicant any proceeding civil / criminal in future regarding the subject matter of the FIR no. 178 of 2019 registered with BKC police station.
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> 15. I say that I have no objection for Quashing of the FIR being C.R. no. 189 of 2019 registered with the BKC police station, against the present applicant for alleged offences u/s 409, 420, 504, 506(II) 120(B) of I.P.C.
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> 16. I say that I am affirming this affidavit out of my own free will and without any fear or coercion of whatsoever nature."

4. Learned Counsel appearing for Respondent No.2 submitted that Respondent No.2 was personally present before this court on the earlier date and the presence of Respondent No.2 was dispensed with under the orders of this court, as such, today Respondent No.2 is not virtually present before this court. Counsel for Respondent No.2 reiterates that the statements are made on the affidavit by Respondent No.2 at free

will and wish for Respondent No.2 without there being any coercion or pressure.

5. Learned Counsel for the Petitioner placed reliance on the judgments of the Apex Court in support of prayer of the quashment of the report. On query put to learned APP, in view of the order of this court dated 27 October 2021, learned APP submitted, on instructions, that there are no criminal antecedents against the Petitioner and though there is a reference of lodgment of a report in the FIR, it is not against the Petitioner, but it is against the another accused, Ajay Dayachand Gupta.

6. Considering the above referred facts, we are of the opinion that the Petitioner made out the case for allowing the petition. The facts on record remains that at the instance of Respondent No.2, the Investigating Agency was set in motion and Investigating Agency had to spare reasonable time for undertaking the exercise of investigation and by completing of exercise of investigation, chargsheeeet was filed in the competent court against the accused, including the Petitioner, as such, we allow the petition subject to imposition of cost.

7. The petition is allowed and the FIR Crime No.178/2019 registered at BKC Police Station and the proceedings in pursuant to lodgment of FIR Crime No.178/2019 are quashed and set aside **qua** the Petitioner subject to the Petitioner and Respondent No.2 depositing an amount of Rs.25,000/- each in the accounts of Children Aid Society, Mumbai (Name of Bank Account : Children Aid Soc. Donation, Bank Account No. : 02370100005612, Bank Name : UCO Bank, Branch : Matunga, Mumbai, IFS Code : UCBA0000237). The amount, so directed by

this court, be deposited in the accounts of Children Aid Society, Mumbai within two weeks from today and the parties to place on record the receipt of deposit of the amount, as directed by this court.

8. The petition is disposed of accordingly.

(ANIL S. KILOR, J.) **(PRASANNA B. VARALE, J.)**