

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 263 OF 2022

1. Mangilal Ratanchand Dhumavat Jain
 2. Dinesh Ratanchand Jain
- ...Petitioners

Versus

1. The State of Maharashtra
 2. Rasiklal Deepchand Palerecha
- ...Respondents

Mr. Abdulla Cultariwala i/b SSB Legal Advisory for the Petitioners.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

Mr. Ankit Pandey for the Respondent No.2.

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
DATE : 5th DECEMBER, 2022

P.C. :

1. Heard 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

notice on behalf of the respondent No.1–State. Mr. Ankit Pandey waives notice on behalf of the respondent No.2.

3. By this petition, the petitioners seek quashing of the FIR bearing C.R. No. 314 of 2019 registered with the L. T. Marg Police Station, Mumbai, for the alleged offence punishable under Section 409 r/w 34 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2, he was a wholesale dealer in gold jewellery merchandise, whereas the petitioners were retail dealers. He has stated that there were business transactions between him and the petitioners for several years and that during the course of one such business transaction, the petitioner No.1 had placed orders for preparation of three gold mangalsutra worth Rs.28,00,000/- and odd. The petitioner No.1 was to pay the said amount alongwith other previous outstanding / dues i.e. Rs.30,50,221/- (total) to him. He has stated that pursuant thereto, 11

cheques were issued by the petitioners, however, the said cheques were dishonoured. According to the respondent No.2, pursuant thereto, he lodged the aforesaid FIR as against the petitioners and one another alleging the aforesaid offence. After investigation, chargesheet was filed in the said case and the case is presently pending before the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, being C.C. No. 28000654/PW/2020.

5. In the interregnum, during the pendency of the aforesaid proceeding, the parties amicably settled their dispute. Learned Counsel for the respondent No.2 has filed the Consent Affidavit of the respondent No.2 which is at 'Exhibit-C' of the petition. In the said Consent Affidavit, it is stated that the parties have amicably settled their dispute and as such, the respondent No.2 has no objection to the quashing of the proceeding.

6. Today, learned Counsel for the respondent No.2 has tendered an Additional Consent Affidavit dated 3rd December, 2022, duly notarized before the Notary. The same is taken on record. In the

said Additional Consent Affidavit, the respondent No.2 has given his no objection to the quashing of the entire case i.e. the FIR/proceeding initiated at his behest, not only as against the petitioner, but even as against the petitioner's brother – Arvind Ratanchand Dhumavat Jain, who is also a co-accused in the aforesaid case. The terms of the settlement have been spelt out in the said Additional Consent Affidavit. It is further stated that pursuant to the settlement, the petitioners have returned all gold jewellery worth Rs.30,50,221/-, which the petitioners had purchased from the respondent No.2. It is stated that in view of the same, the respondent No.2 has no grievance as against the petitioners and the other co-accused – Arvind Ratanchand Dhumavat Jain.

7. Having regard to the nature of dispute, the dispute appears to be essentially civil in nature. Be that as it may, the parties have amicably settled their dispute and the petitioners have returned the gold jewellery, given by the respondent No.2. The respondent No.2 has not only given his no objection for quashing of the proceeding *qua*

the petitioners, but even as against the petitioner's brother – Arvind Ratanchand Dhumavat Jain.

8. The respondent No. 2 is present in Court. Learned Counsel for the respondent No. 2 has tendered a self attested photocopy of the Aadhar Card of the respondent No. 2. The same is taken on record. On questioning, he re-iterates what is stated by him in his affidavit and additional affidavit.

9. Considering the nature of dispute, the nature of transaction between the parties, the amicable settlement between them, the Consent Affidavit and Additional Consent Affidavit of the respondent No.2, that he has no objection for quashing of the proceedings 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 petition.

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

10. The petition is accordingly allowed and the FIR bearing C.R. No.314 of 2019 registered with the L.T. Marg Police Station, Mumbai and consequently, the proceeding pending before the Learned Metropolitan Magistrate, 28th Court, Esplanade Mumbai, are quashed and set-aside as against all the accused in the said case.

11. The petitioners as well as the respondent No.2, to deposit a sum of Rs.20,000/-, i.e. petitioners, Rs.20,000/- and the respondent No.2, Rs. 20,000/- with the **Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465**, as costs. The said costs to be deposited on or before 30th December, 2022.

12. Rule is made absolute in the aforesaid terms subject to deposit of costs by both the parties. Petition is disposed of accordingly.

13. Stand over to **5th January, 2023** for recording compliance of the order of deposit.

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.