

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1632 OF 2021

Jadavjibhai Lalji Shah & Ors.

...Petitioners.

Versus

The State of Maharashtra & Another.

..Respondents.

Mr. Kishor N. Rankawat, Advocate for Petitioner.

Ms. M.H. Mhatre, APP for Respondent-State.

Mr. Kishor Jain i/b Nisha Waghmare, Advocate for Respondent No.2.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : April 22, 2022.

P. C. :

1. The invocation of extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India as well as under section 482 of the Code of Criminal Procedure, 1983 is sought for by the petitioners to quash the First Information Report registered against them at Mulund Police Station, being Crime No. 277 of 2020 on the allegation of commission of offence punishable under section 420 read with 34 of the Indian Penal Code and section 4 of the Maharashtra Ownership of Flats Act (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. In nutshell, the case in the FIR against the Petitioners is that the husband of Pratibha Devchand Shah - late Devchand Mulji Shah had booked certain flats in the housing project of petitioners, and had paid certain amount towards the purchase of those flats, however, the petitioners

despite receipt of consideration from the late Devchand Mulji Shah avoided to abide by their obligations and to give possession of the agreed flats. Having felt defrauded at the hands of petitioners, Pratibha Shah through her Power of Attorney Holder Mr. Mahendra Shah, Respondent No.2 herein filed the subject First Information Report (FIR) against the petitioners.

3. Learned counsel appearing on behalf of respective parties submitted that the petitioners and Respondent no.2 have now settled their disputes and entered into consent terms, as such Respondent No.2 no more wants to prosecute the petitioners in the subject FIR. The counsel further submitted that in view of such settlement arrived at between the parties, the present petition is filed for quashing the subject FIR by consent of Respondent No.2.

4. In the present petition, original complainant, namely, Pratibha Shah as well as Respondent No.2 – Mahendra Shah have filed their separate affidavits giving no objections dated 18th July, 2020, wherein they have individually stated that in the light of consent terms entered into the parties, they have no objection for quashing the subject FIR against the petitioners.

5. Respondent No.2 – Mahendra Shah is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the FIR in question instituted at his instance against the petitioners

for the offence punishable under section 420 read with 34 of the Indian Penal Code and section 4 of the Maharashtra Ownership of Flats Act (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

6. Apparently, the dispute is purely of civil nature and it can, be safely said that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. The parties have settled the matter, by entering into consent terms which are tendered in the bail proceedings. The compromise records that they have no grudge against each other and the complainant has specifically agreed that he has no objection if the FIR in question is quashed. As the original complainant and Respondent No.2 do not intend to proceed with the prosecution of petitioners, on that basis the submission of the petitioners is that the continuance of prosecution in the aforesaid FIR will be a futile exercise and mere wastage of precious time of the Court as well as investigating agencies.

7. In the light of above facts-situation and especially in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the FIR alive, except ultimately burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforesaid fact-situation, the continuation of prosecution of the petitioners in the instant case/FIR will amount to the abuse of process of

Court and therefore it is in the fitness of things to quash the subject FIR in order to secure the ends of justice. We are in total agreement with the submission of learned Counsel appearing for the respective parties that continuation of prosecution/FIR in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

8. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the FIR in question. Accordingly, writ petition is allowed in terms of prayer clause (a). However, we find it would be in the fitness of things to saddle the Petitioners with the cost of Rs.75,000/- each, which shall be paid to “**Tata Memorial Hospital, Mumbai**” an institution that takes care of the advanced and terminally ill cancer patients.

9. For the quashment to take effect, the petitioners shall pay the said costs and produce the receipts thereof on the file of this Court within the period of five weeks from today. Failing to pay costs and produce receipts within the stipulated time, the petition shall stand dismissed automatically without further reference to the Court and the order quashing proceedings / FIR shall be treated as *non-est*.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]