

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

CRIMINAL WRIT PETITION NO. 1126 OF 2021

1. Ashish Rameshchandra Agroya &
2. Nitesh Rameshchandra Agroya

.... **PETITIONERS**

// VERSUS //

1. The State of Maharashtra,
L.T.Marg PS, Mumbai
2. Omprakash Shantilal Bhadada.

.... **RESPONDENTS**

Shri Ommeel A. Jadhav, Advocate for Petitioners.
Shri K.V.Saste, A.P.P. for Respondent No.1/State.
Mr Keral Mehta i/b Ms Vinaya G. Padwal, Adv. for Respondent No.2.

CORAM : **PRASANNA B. VARALE AND**
 ANIL S. KILOR, JJ.

DATED : **FEBRUARY 03, 2022**

P.C.

1. Heard.
2. The petitioners have approached this Court by way of the present writ petition under Article 226 of the Constitution of India as well as under Section 482 of Code of Criminal Procedure for quashing of First Information Report bearing Crime No.54 of 2020, registered on 27/02/2020 with

L.T.Marg Police Station, Mumbai for the offences punishable under Sections 409 and 420 of the Indian Penal Code on the ground that the dispute has been amicably settled between the petitioners and the respondent No.2 (original complainant).

3. On 27/01/2020 the complainant lodged a complaint to the police that the petitioner No.1-Ashish Agroya had been to his shop and represented that there is marriage ceremony in his family and he wants jewelry. Accordingly, the complainant had given 8 pieces of gold necklaces and 36 pieces of gold bangles, totally weighing 1226.100 gms. totally costing Rs.47,00,000/-. However, despite regular follow-ups the amount was not received by him. Thereupon, the police registered the crime against the petitioners.

4. The learned counsel for the petitioners states that after lodging the report, both the parties have settled the dispute amicably with the help of well-wishers/friends and accordingly the complainant does not want to pursue the case and as such he has no objection for quashing of the First Information Report in question.

5. The learned counsel for the respondent No.2/ complainant has drawn attention of this Court to the affidavit filed by the complainant, wherein

he has admitted the fact of settlement and also states that he does not want to pursue the case and he has no objection if the FIR is quashed.

6. After going through the contents of the FIR, we are of the opinion that the dispute is about recovery of the amount. It is a commercial transaction and no public law element is involved in the present matter. In the said backdrop, in view of the settlement between the parties, even if the trial is permitted to continue, it would be a futile exercise.

7. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of *Madan Mohan Abbot vs. State of Punjab*, reported in **(2008) 4 SCC 582**, we find that no purpose would be served by keeping the criminal proceedings pending except 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 will amount to abuse of the process of Court and therefore, it is in the fitness of things to quash the FIR and proceedings in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings 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 the 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 criminal proceedings in question.

9. In that view of the matter, the writ petition needs to be allowed. As the police machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle Petitioners and Respondent No.2 with costs. Hence, I pass the following order:

- i) The writ petition is allowed subject to payment of costs of Rs.1,00,000/- each by the petitioners and the respondent No.2, which shall be paid to the Dean, Government Medical College and Hospital, Aurangabad within eight weeks and the parties shall place on record the receipts of the deposit.
- iii) For the quashment to take effect, Petitioner Nos.1 and 2 and Respondent No.2 shall pay the said costs and produce receipt thereof on the file of this Court within a period of eight weeks from today, failing which the petition shall stand dismissed automatically without further reference to the Court and order

quashing the FIR shall be treated as non-est. Registry will then intimate the concerned Police Station that subject FIR shall not be treated to have been quashed and that police shall proceed against the Petitioners in accordance with law.

The writ petition stands **disposed of** in the above terms.

(ANIL S. KILOR, J)

(PRASANNA B. VARALE, J)

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