

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

CRIMINAL WRIT PETITION NO.1337 OF 2022

Lipton Luis Gonsalves
R/at: Agashi, Virar(W),
Tal: Vasai, District: PalgharPetitioner.

V/s

1. The State of Maharashtra
Through Charkop Police Station,
at Mumbai.
2. Shri Amul Navnitlal Raval
Aged 53 yrs, Occ: Doctor,
Residing at; 301 Shivneri
Co-operative Housing Society,
Plot No.252, Sector 5, Charkop,
Kandivali (E), Mumbai. ...Respondents.

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Mr. Anil D'souza, Advocate for the Petitioner.
Mr. J.P. Yagnik, APP for the State.
Mr. Nilesh Tribhuvan a/w Mr. Burzin Bharucha, Mr.
Sanjay Rego, Kaushal Popat i/b White & Brief, Advocates
for Respondent No.2.

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

DATE : 30 NOVEMBER 2022.

Order (Per R.N.Laddha,J.)

Heard Mr Anil D'Souza, learned Counsel for the
Petitioner; Mr Nilesh Tribhuvan, learned Counsel for Respondent

No.2 and Mr J.P. Yagnik, learned Additional Public Prosecutor for Respondent No.1.

2. Rule. The Rule is made returnable forthwith, at the request of and with the consent of the learned Counsel for the parties. Learned Counsel for the Respondents waived service.

3. This is a petition for quashing FIR No. 9 of 2016 dated 7.1.2016 registered at the Charkop Police Station, Mumbai, alleging commission of offences punishable under Sections 406, 420 r/w Section 34 of the Indian Penal Code by Respondent No.2.

4. Mr Anil D'Souza and Mr Nilesh Tribhuvan, in unison, submitted that the parties have amicably settled the dispute. It is submitted that the Consent Terms have arrived at between the parties in Commercial Suit No.384 of 2016 and are placed on record before this Court. It is submitted that in the Consent Terms, it was mutually decided by the parties that the present impugned FIR and the charge sheet filed pursuant to the same be quashed. It was submitted that as per the Consent Terms, Respondent No.2 had received the agreed amount. It is submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. It is submitted that Respondent No.2 has also filed the Consent Affidavit. The learned Counsel for the parties submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme

Court in the case of *Giansingh Vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. Vs. State of Punjab & Anr.*²

5. Learned APP for Respondent No.1 submits that appropriate orders may be passed.

6. It reveals from the record that the Respondent No.2 has filed the Consent Affidavit dated 29.11.2022, duly affirmed before the Notary and Aadhar Card duly attested by him. Respondent No.2 is present before the Court and stated that he has no objection if the FIR and the criminal case in question are quashed against the petitioner in view of the settlement between the parties. Respondent No.2 has been identified by his Counsel. Learned APP has verified the original Aadhar Card of Respondent No.2.

7. We have examined the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in the case of *Giansingh and Narinder Singh (supra)*. Based on the material on record, it is apparent that the dispute between the parties has a predominantly civil flavour. Since the parties have amicably settled their dispute, the possibility of conviction is remote and bleak. Further continuation of the proceedings in the aforesaid criminal case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate, 24th Court,

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

Borivali, Mumbai, arising out of impugned C.R.No.09 of 2016 would tantamount to the abuse of the process of law. Since the Respondent No.2/First Informant will not support the allegations made by him in the impugned FIR, nothing fruitful will come out of the prosecution.

8. Considering these facts and circumstances, we see no difficulty in quashing the impugned FIR *qua* the Petitioner. Accordingly, the Criminal Writ Petition is allowed. The Criminal Case No.573/PW of 2018 pending before the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai, arising out of impugned F.I.R. No.09 of 2016 registered at the Charkop Police Station, Mumbai, are quashed and set aside *qua* the Petitioner, subject to depositing Rs.25,000/- by him with the **Mumbai Police Welfare Fund bearing Account No.465010100008693, IFSC No. UTIB0000465, on or before 17th January 2023.**”

9. Rule is made absolute in the above terms.

10. Learned Counsel for Respondent No.2 to file his Vakalatnama, if not filed within two weeks of the uploading of this order.

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

(R.N.LADDHA,J.)

(REVATI MOHITE DERE,J.)