

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

CONTEMPT PETITION NO. 225 OF 2022

1. Pratap Restaurant Pvt. Ltd,
Through its director Mr. Sanjay Pratap,
Having his address at 201, 2nd Floor,
Dream Square, Dalia Estate, Veera Desai
Road, Andheri (West), Mumbai.
 2. Mr. Sanjay Pratap, Indian Inhabitant
Having his address at Flat No. 1910,
Building No.3B, Samarth Aangan,
Oshiwara, Andheri (West), Mumbai-400053.
 3. M/s, Sheesha Sky Lounge Hospitality
& Services Pvt. Ltd. Through its
Director - ALI REZA ABDI,
Having his address at Primordial House,
C-105, 1st Commercial Floor,
Opp. August Kranti Maidan, Gowalia Tank,
Grant Road (west), Mumbai.
 4. Mr. Ali Reza Abdi, Indian Inhabitant,
Having his address at Flat No. 201,
2nd Floor, Aligant Tower, Near RBL Bank,
Mumbai Central, Mumbai.
- ... Petitioners.

**SANJAY
KASHINATH
NANOSKAR**

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SANJAY KASHINATH
NANOSKAR
Date: 2022.07.28
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V/s.

1. Amber Hospitality Service Through its
Director/ Partner - Rahul S. Pasi,
Having address at CTS No.558(part),
Patel wadi, Gauthan No.3, Juhu, Balraj
Sahni Road, Santacruz (w), Mum — 400049.

2. Mr. Rahul Subhash Pasi,
Director,
Sarovar Bungalow, Patel wadi, Near Juhu
Church, A.B. Nair Road, Near Novotel
Hotel, Juhu - 400049, Mumbai.
3. Mr. Raj Subhash Pasi,
Director,
Sarovar Bungalow, Patel wadi, Near Juhu
Church, A.B. Nair Road, Near Novotel Hotel,
Juhu - 400049, Mumbai.
4. Mr. Vishal Subhash Pasi,
Director,
Sarovar Bungalow, Patel wadi, Near Juhu Church,
A.B. Nair Road, Near Novotel Hotel,
Juhu - 400049, Mumbai.
5. Mr. Subhash Muniram Pasi ,
Director,
Sarovar Bungalow, Patel wadi, Near Juhu Church,
A.B. Nair Road, Near Novotel Hotel,
Juhu - 400049, Mumbai. ... Contemnors/Respondents.

Mr. Anukul Seth i/b. Sajal K. Yadav for the Petitioners.
Mr. Vijendra K. Rai with Priti Jaiswal for the Respondents.

CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATE : 11 July 2022.

P.C.:

Heard the learned counsel for the parties.

2. The contempt petition arises in respect of the order dated 8 February 2022 passed in Criminal Application No.685/2021 filed by the Respondents/ Original Applicants for quashing of FIR No.77/2021 lodged by the present Petitioner No.2- Complainant. The Petitioner in this contempt petition was Respondent No.2 in the criminal application, and Respondents in the contempt petition are original Applicants. The Petitioners are referred to as Complainants and the Respondents as original Applicants.

3. The Petitioner No.2- Complainant lodged an FIR bearing No.77/2021 at Amboli Police Station, Jogeshwari (East), Mumbai, against the original Applicants of offences punishable under sections 451, 506 read with section 34 of the Indian Penal Code. It was stated in the complaint that on 21 January 2021, persons from one Ambar Hospitality Services forcibly entered the premises and took forcible possession of the same. The Original Applicants filed Criminal Application No.685/2021 for quashing the FIR. The application was initially filed for quashing on merits. Thereafter the Complainant filed an affidavit. It was stated in the affidavit that after the registration of FIR, a settlement was initiated,

meetings were conducted between the parties, and the parties arrived at an amicable settlement. It was stated by the Complainant that the affidavit was submitted at the instance of the original informant with his consent and without force and coercion. The Court noted the factum of settlement, the consent of Complainant based on settlement, and there was no element of public law involved, proceeded to quash the FIR directing the parties to pay the cost of Rs.1 lakh as the police machinery and court machinery were used to settle the dispute of private nature. In the order, there is a reference to the undertaking given by the original Applicants having been accepted as an undertaking to the Court. Thereafter the present contempt petition is filed alleging that the Respondents have violated the order of the Court dated 8 February 22 and the consent terms and the undertaking.

4. The manner in which the contempt petition is presented and pursued demonstrates a misconception of the nature of proceedings in which the order was passed on 8 February 2022 and of the contempt proceedings arising from the same. The criminal application was filed invoking inherent powers of this Court under section 482 of the Code of Criminal Procedure, 1973 and extraordinary jurisdiction under Article 226 of the Constitution of India. When the FIR is registered and a cognizable offence is made out, the police machinery is bounden to investigate in the same. Unless exceptional circumstances are made out, the FIR is not

quashed at the inception when the investigation is ongoing. Generally, the complainant's consent alone does not result in quashing of FIR when the cognizable offence is made out and when it is against the society. In the case of *Gian Singh v. State of Punjab*¹, the Supreme Court has observed that even in a case where a cognizable offence is demonstrated, the Court can use its inherent and extraordinary jurisdiction to quash the FIR and the proceedings upon the consent of the complainant, in respect of offences which do not have a large-scale implication on society, such as purely commercial disputes, matrimonial disputes etc. Therefore, while exercising this jurisdiction, the Court looks at the nature of the offence and its likely impact on the society and then quashes the FIR and puts an end to the criminal proceedings. This jurisdiction is not for creating and adjudicating civil rights between the complainant and the accused. The factum of the consent of the complainant is one circumstance while deciding whether to quash the FIR and the proceeding. The Court does not adjudicate upon the agreement between the complainant and the accused based upon which the complainant gives consent for quashing the FIR. The Court, however, examines whether the consent is given without coercion and with free will.

5. In the present case, the Complainant and the original Applicants entered into consent terms. Though there is a reference to accepting the undertaking that was not made the basis of the

¹ (2012) 10 SCC 303

order, but the consent of the Complainant. The only effective order passed was quashing of the FIR. The criminal application was not disposed of giving effect to the undertaking. If the suit is filed contrary to the undertakings as contended, the remedy would be to seek relief in the suit that is filed.

6. Resultantly, the contempt petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)