

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

WRIT PETITION NO.1089 OF 2022

Ashok Kumar Dalmia	... Petitioner
Vs.	
The State of Maharashtra And Anr.	... Respondents

**ALONG WITH
WRIT PETITION NO.1090 OF 2022**

Ashok Kumar Dalmia	... Petitioner
Vs.	
The State of Maharashtra And Anr.	... Respondents

**ALONG WITH
WRIT PETITION NO.1091 OF 2022**

Shivkumar Niranjnall Dalmia And Ors	... Petitioners
Vs.	
The State of Maharashtra And Ors	... Respondents

Mr. Subodh Desai i/b Bachubhai Munim & Co., for the petitioners in Writ petition Nos. 1089 of 2022 and 1090 of 2022.

Mr. Nitin Pradhan, Mr. Niranjan Mundargi, Mr. Omkar Mulekar and Ms. Dhanashree Gaikawari and Mr. Ayaz Bilawala i/b Bilawala & Co., for the Petitioners in Writ Petition No. 1091 of 2022.

Mr. Amol J. Phoujdar for Respondent No. 2 in all writ petitions.

Ms. S. D. Shinde, APP for the Respondent-State in Writ Petition No.1089 of 2022 and 1090 of 2022.

Ms. M. H. Mhatre, APP for State in Writ Petition No.1091 of 2022.

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

DATE : 12th April, 2022

P.C. :

1. All these Petitions are filed for quashing of the charge sheet filed against Petitioner respectively for different offences of Indian Penal Code. Respondent No.2 (Surendrakumar & Nirmaladevi) in all these Petitions is the first informant in respective offences for which three separate charge sheets are filed. The Petitioners on one hand and Respondent No.2 on the other hand are the relative of each other. Their common ancestor is one Niranjanlal Dalmia. He was having sons and daughters out of them we are concerned with three sons. Their names are as follows:- a) Surendra, b) Shivkumar and c) Ashok.

2. The family is having various movable and immovable properties situated at different parts of Bombay. Furthermore father Niranjanlal and three sons were carrying on different businesses together or in the names of different companies consisting of combination of some of them. Said Niranjanlal expired on 26.09.2005. It seems that the dispute has started thereafter on account of distribution of the properties amongst sharers. There are three offences registered, two of them were registered at Mulund Police Station subsequently they were transferred to Economic Offence Wing, Mumbai. Third offence is registered at Marine drive Police Station. The details of those offences and charge sheets filed thereon and the

corresponding Writ Petitions filed are as follows:-

Sr. N o.	FIR No.	Date of offence	Section	Name of First informant	Name of Accused	Charge-sheet case details	Petition No.
1	118 of 2015 Mulund Police Station (Cr. No.16 of 2016 Economic Offence Wing)	10.03. 2015	429, 465, 466, 468, 471 of IPC.	Surendrakumar Niranjantal Dalmia	Ashok Kumar Dalmia	CC No.157/P W/2021 Metropolitan Magistrate 47 th Court of Mumbai.	WP No.1089 of 2022
2	2 of 2015 Mulund Police Station (Cr. No. Economic Offence Wing Cr. No.8 of 2016.	01.01. 2015	341, 406, 447, 465, 467, 471, 474 of IPC.	Nirmaladevi Surendrakumar Dalmia	Ashok Kumar Niranjantal Dalmia	CC. No.422/P W/ 2020 Metropolitan Magistrate 47 th Court of Mumbai.	WP No.1090 of 2021
3	200 of 2015 Marine drive Police Station.	23.12. 2014	406, 409, 419, 420, 465, 467, 468, 471 read with Section 34 of IPC.	Surendrakumar Niranjantal Dalmia	1.Shivkumar Niranjantal Dalmia 2. Shailish Shivkumar Dalimia 3. Umadevi Shivkumar Dalmia	CC No.4/ PW/2016 Additional Chief Metropolitan Magistrate 8 th Court of Mumbai.	WP No.1091 of 2022

3. The dispute is in between Surendra Niranjallal Dalmia and his wife Nirmala on one hand and Ashok Niranjallal Dalmia and Shivkumarlal Niranjallal Dalmia and his sons Shailesh and wife Umadevi. There are several proceedings filed between the parties before this Court, before National Company Law Tribunal (NCLT), before Small Causes Court, before the office of Joint Charity Commissioner. There are various companies formed by either of them. During pendency of these proceedings the parties have entered into the settlement and memorandum of family arrangement is executed on 21st March, 2022. Its copy is filed, it is signed by in as much as 21 persons. The copy is also filed before this Court in the proceedings of suit No.551 of 2019. Learned Single Judge has passed an order dated 21st March, 2022. So also Learned Single Judge on 22nd March, 2022 in that suit has taken on record supplementary memorandum of family settlement.

4. In present proceedings we are not concerned with other terms of settlement. We are only concerned with the terms relating to quashing of these three criminal proceedings.

5. On this background, we have heard Learned Advocate, Shri. Subodh Desai for Writ Petition Nos.1089 of 2022 & 1090 of 2022 and learned senior Advocate Shri. Nitin Pradhan for Writ Petition No.1091 of 2022 for the

Petitioners, Ms. S. D. Shinde learned APP and learned Advocate Amol Phoujdar for Respondent No.2.

6. As per clause No.10 (iii, iv and v) of the consent terms there is a consensus to file a Petition for quashing. This is also referred in para No.5 of the order dated 21st March, 2022 passed by the learned Single Judge. In view of that following consent affidavits are filed:-

Sr. No.	Writ Petition Nos.	Respondent No.2	Affidavit
1	1089 of 2022	Surendrakumar Dalmia	Affidavit on page No.112 to 116
2	1090 of 2022	Nirmala Surendrakumar Dalmia	Affidavit on page No.89 to 93
3	1091 of 2022	Surendrakumar Niranjnallal Dalmia	Affidavit on Page No.29

7. We have read these affidavits, the deponents of the affidavit have reiterated. Entering into the memorandum of family agreements and passing of a consent order on 21st March, 2022 and also given consent for quashing. The Respondent No.2 Surendra in Writ Petition No.1091 of 2022 has also given consent for defreezing the bank account.

8. In Writ Petition No.1089 of 2022 the Crime No.118 of 2015 at Mulund Police Station is involved. The sum and substance of the complaint filed by Surendrakumar is that the Accused Ashok Kumar therein has forged the signature of the first informant Surendra on three agreements. Out of them two are dated 18th April, 1975 and one is dated 4th April, 1975. The first informant Surendrakumar got knowledge of these agreements when they were produced by Accused Ashok in the proceedings of anticipatory bail application before Sessions Court, Mumbai. The grievance of first informant was that he has not signed on those three agreements and in fact the property described in those three agreements belongs to his wife Smt, Nirmaladevi and the first informant was not having any share in it. This offence was transferred to Economic Offence Wing, and they have filed charge sheet.

9. Whereas the sum and substance of the first informant (Nirmaladevi) in Crime No.2 of 2015, Mulund Police Station is that Accused Ashok Kumar has not returned the land bearing CTS No.551 of 2012 situated at Mulund (West), to the first informant. It was agreed to use this land for family business and return it to first informant when demanded. It was also revealed that accused Ashok has entered into an agreement to lease dated 20.10.1969. The case was transferred to Economic offence wing and charge sheet is filed by them.

10. Whereas in Writ Petition No.1091 of 2022. The first informant is one Surendrakumar Niranjnall Dalmia Offence is registered at Marine drive Police Station. Charge sheet is also filed by them. Sum and substance of the allegation is that the three accused persons have transferred the amount belonging to Minarva Dealers Pvt. Ltd. In that company father Niranjnall and Shivkumar, Shailesh and Umadevi and the first informant Surendrakumar were the directors. The company has invested 33% of their capital in Azure Tree Township (LLP). The Minarva Company owes a profit. However the Accused Shivkumar has diverted the profit in the account of his son and in the name of M/s King Realtors Pvt Ltd. There is further allegation that accused Shivkumar has forged board resolution, so as to support diverting of profit. The bank Account of the company was in (ING Vysya Bank) Kotak Mahindra Bank. Those accounts were freezed on the request of investigating officer. Their details are as follows:-

Sr. No.	Account No	Bank Name	Account Holder
1	552044009839	Kotak Mahindra Bank, Andheri East Branch, Mumbai	Minerva Dealers (P) Ltd.
2	552011003653		
3	552011003565	Kotak Mahindra Bank, Andheri East Branch, Mumbai	Minerva Apparels (P) Ltd.

11. It is true that both the parties are having business dealing with each other. They are family members. They have settled all their disputes and they have decided to withdraw the allegations and they are seeking quashing of the proceeding as referred above. We are not concerned with other terms of the memorandum. All the respondent No.2 in this Petitions have given consent for quashing. No purpose will be served, if the proceedings will remain pending. Hence we are inclined to exercise power under Section 482 of Code of Criminal Procedure and pleased to pass the following order:-

ORDER

- i) Writ Petition No.1089 of 2022 is allowed in terms of prayer clauses (a) and (b). Writ Petition No.1090 of 2022 is allowed in terms of prayer clauses (a) and (b). Writ Petition No.1091 of 2022 is allowed in terms of prayer clauses (a), (b) & (c).

- ii) The operation of bank accounts mentioned in prayer clause (b) of Writ Petition No.1091 of 2022 today onwards, i.e., post the order passed today by this Court allowing Writ Petition No. 1091 of 2022, shall stand restored to its original position as

they were earlier, i.e., those bank accounts shall be henceforth operated by the persons who were operating those bank accounts prior to the freezing of those accounts. In view of the order passed today, the investigating officer shall intimate the concerned banks to defreeze the bank accounts with immediate effect.

iii) The Petitioner in Writ Petition No. 1089 of 2022 shall pay the cost of Rs.1,00,000/-. The Petitioner in Writ Petition No.1090 of 2022 shall also pay the cost of Rs.1,00,000/-. The petitioners in Writ Petition No. 1091 of 2022 shall in all pay cost of Rs.1,00,000/-. The complainant Ms. Nirmala S. Dalmia (Respondent No.2 in Writ Petition No.1090 of 2022) shall pay cost of Rs.50,000/-. The complainant Mr. Surendrakumar Dalmia (Respondent No. 2 in Writ Petition Nos.1089 of 2022 and 1091 of 2022) shall pay the cost of Rs.50,000/-. The cost amount to be deposited by the parties within four weeks from today and receipts thereof be placed on the record of this Court, failing to pay cost and produce the receipts within stipulated time, the petitions shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as *non-est*.

iv) The total cost amount comes to Rs.4,00,000/-, the same shall be deposited in the following manners :

[1] Rs.2,00,000/- to be deposited with Tata Memorial Cancer Hospital, Mumbai.

[2] Rs.1,00,000/- to be deposited with Mumbai Police Welfare Fund, having account with Axis Bank, Branch : Lamington Road, Mumbai.

[3] Rs.1,00,000/- to be deposited with Prison Authority– Inspector General of Prisons, Maharashtra State, Pune. In turn, the Prison Authority shall use the said amount of Rs.1,00,000/- for purchasing the books useful for the prisoners lodged in various central prison.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)