

State. Mr. Shah, learned Counsel waives notice on behalf of the respondent No.2.

3. By this petition preferred under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure (for short "Cr. P.C"), the petitioner seeks quashing of the First Information Report (for short "F.I.R") registered vide C.R. No.34 of 2012 with the L.T. Marg Police Station, Mumbai for the alleged offences punishable under Sections 406, 465, 468, 471, 474, 420 r/w 34 of the Indian Penal Code (for short "I.P.C") and consequently the proceeding pending before the learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai being Criminal Case No.433/PW/2014. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. Perused the papers. Briefly stated, facts are as follows.

5. Respondent No.2 - Kanaiyyalal Ganpatlal Mewada (for short "respondent No.2") is a developer. He runs a Company in the name and style as "M/s. Mark Constructions" at

Jambhulwadi, Kalbadevi Road, Mumbai. Rajesh Gokuldas Gokani and Vinaykumar Dinanath Tripathi (Petitioner) are his partners in the business. The petitioner has 40% share in the business, whereas Rajesh Gokani has 27% and respondent No.2 has 33% share. The company has a bank account bearing No. 13910200005937 in Federal Bank, Borivali Branch, Borivali, Mumbai. The Company had accepted re-development work of three buildings namely Saidunnissa House, Kapadia Building and Jamia Safia Building (Pandol Building). The company had, therefore, moved a proposal for purchase of Jamia Safia building before Al Jamait @ Saifia Education Trust, second floor, Badri Marg, Dr. D.N.Road, Fort, Mumbai on 28th January, 2009. The petitioner had also signed on the said proposal in the capacity of a partner. Pursuant to the permission of the Charity Commissioner, valuation of the said building was fixed at Rs.72,00,000/- and the permission for re-development has been accorded to the said Company.

6. It is alleged that the petitioner had cheated respondent No.2 and his another partner by stating that the transaction was

of Rs.One Crore and Fifty Five Lakh and that he had paid Rs.10,00,000/- to the middleman. Subsequently, at the time of payment of the amount to the trustee of the said Trust on the basis of the agreement, it transpired from the agreement that the petitioner had signed the agreement as a sole owner by putting his signature and rubber stamp. When respondent No.2 objected the same, the petitioner admitted his mistake and stated that the said illegality would be rectified at the time of registration of the agreement.

7. Respondent No.2 trusted the petitioner, however, the petitioner did not rectify the same, and thereby, not only committed criminal breach of trust but also committed forgery for the purpose of cheating and used the forged agreement by dishonestly and fraudulently showing it to be a genuine document. Accordingly, an F.I.R came to be registered on the basis of a report lodged by respondent No.2 against the petitioner.

8. As a result of investigation, a charge-sheet has been laid in the Court of 28th Metropolitan Magistrate, at Esplanade,

Mumbai being Criminal Case No.433/PW/2014 under sections 406, 465, 468, 471, 474, 420 r/w 34 of the I.P.C, as against the petitioner.

9. Learned Counsel for the petitioner submits that during the pendency of the proceeding, the parties amicably settled the dispute.

10. Learned Counsel for respondent No.2 has tendered an affidavit of respondent No.2 dated 6th October, 2022 duly notarized before the Notary Public along with copy of the consent terms between the parties arrived at before the Sole Arbitrator Mr. Minoo Siodia, Advocate and Solicitor. The same is taken on record. It would be apposite to extract paragraph 17 of the consent terms which reads thus;

" The Parties hereby agrees and confirms to co-operate with each other for executing the present consent terms and shall also sign and execute necessary Deeds, Documents and Letters/Applications as may be required

for regularising and /or deleting the names of retiring partners being Claimant, Kanaiyalal Ganpatlal Mewada, and Respondent No3, Rajesh Gokaldas Gokani, from bank account/s of M/s Mark Constructions (Respondent No.1) and also the registered partnership firm carrying on business in the name and style of M/s Mark Constructions, redevelopment of the existing properties of M/s. Mark Constructions (Respondent No.1 herein), negotiating and settling the dues of the lenders of M/s. Mark Constructions (Respondent No.1), and also shall withdraw, within a period of 4 weeks from the date of filing of the present consent terms before the Hon'ble Tribunal, all complaints including Criminal Complaints, appeals, legal notices filed by the parties against each other for effectively implementing the terms and conditions of the present consent terms. The Claimant, Kanailyalal Ganpatlal Mewada hereby agrees, confirms and undertakes that he will consent for quashing of the

Chargesheet filed in Criminal Case No.433/PW/2014 pending in Court No.28 before Metropolitan Magistrate, in Criminal Writ Petition/Criminal Application to be filed by the Respondent No.2, Vinaykumar Dinanath Tripathi".

A duly attested photocopy of the Aadhar Card of the respondent No.2 is also tendered on record. The same is taken on record. In the said affidavit, respondent No.2 has stated that they have amicably settled the dispute in terms of the consent terms. He has further stated that he has no objection in quashing C.R. No.34 of 2012 and Criminal Case No.433/PW/2014.

11. Respondent No.2 is present in the Court. On being questioned, respondent No.2 reiterates what is stated by him in his affidavit. Learned Counsel for respondent No.2 has identified him. Learned A.P.P has verified the original Aadhar Card of respondent No.2.

12. Considering the nature of the dispute, amicable settlement arrived at between them before the Sole Arbitrator and the affidavit of respondent No.2 as well as having regard to the judicial pronouncements of the Apex Court in **Gian Singh Vs. State of Punjab and another**¹ and **Narinder Singh and others Vs. State of Punjab and another**,² there is no impediment in allowing the petition.

13. The petition is accordingly allowed. The FIR bearing C.R. No.34 of 2012 registered with the L.T. Marg Police Station, Mumbai, as against the petitioner and consequently the proceeding pending before the learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai being Criminal Case No. 433/PW/2014, are quashed and set aside.

14. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

15. Both the petitioner and respondent No.2 to deposit a sum of Rs.75,000/- with the **Mumbai Police Welfare Fund bearing Account No.465010100008693, IFSC No.UTIB0000465,** as costs. The costs to be deposited within three weeks from today.

16. Matter be listed on **30th January, 2023** for recording compliance of the order of costs.

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

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]