

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1915 OF 2022

Harish Vrajilal Parikh. ... Petitioner.

V/s.

Mrs.Urvashi Ashwin Shah and others. ... Respondents.

Mr.Rubin Vakil with Ms.Esha Malik i/b. Vimadalal & Co.
for the Petitioner.

Faran Khan i/b. Santosh Kumar Mishra for Respondent No.1.

Mr.K.V.Saste, APP for the Respondent- State.

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

DATE : 11 July 2022.

P.C. :

Heard the learned counsel for the parties. Petition is
taken up for disposal.

2. By this petition, the Petitioner has sought the following
relief:

“(a) That this Hon’ble Court be pleased to issue a writ of mandamus or certiorari or any other appropriate writ, order or direction seeking quashing and setting aside of the First Information Report bearing C. R. No. 49 of 2015 dated 12" February 2015 registered with the Vile Parle Police Station (Exhibit A hereto) and the proceedings being C.C. No.1688/ PW/2015 (6501688/2015-CNR No.MHMM19-000907-

2015) arising therefrom and pending before the Learned Metropolitan Magistrate, 65" Court, Andheri, for offences punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code, 1860 against the Petitioner and Ms. Vaishali H. Parikh alias Vaishali Ritul Shah on such terms and conditions as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The reason given by the Petitioner is the consent by Respondent No.1 - Complainant.

3. The learned counsel for the Petitioner and Respondent No.1 jointly make a request that the FIR in question be quashed as Respondent No.1 has given consent. The learned counsel for the Petitioner and the learned counsel for Respondent No.1 have relied upon the decision of the Supreme Court in the case of *Gian Singh v. State of Punjab*¹, and contend that the legal position be applied to the facts of the present case.

4. The Petitioner is a developer who entered into a Memorandum of Undertaking with Respondent No.1 to develop the property and received certain moneys and was to give certain flats which the Petitioner did not do and also did not return the moneys. On these allegations an FIR was lodged. The affidavit of consent is filed by Respondent No.1 wherein it is stated as under:

"4. After negotiations and discussions, the said private disputes are mutually and amicably resolved as the Petitioner has agreed to pay Rs.18,00,000/- (Rupees Eighteen Lakhs only) as and by way of settlement. I have agreed to accept

¹ (2012) 10 SCC 303

Rs.18,00,000/- (Rupees Eighteen Lakhs only) on behalf of M/s. A.V. Shah Developers in full and final settlement from the Petitioner on account of transaction with M/s. Vaibhav Developers and which amount is being paid by the Petitioner vide the DD/Bankers Cheque No.087782 dated 25-04-2022 drawn on HDFC Bank in favour of Mrs.Urvashi Ashwin Shah, a copy of which is annexed as Exhibit No.1 hereto. I hereby unconditionally withdraw all the allegations made in the impugned F.I.R against the Petitioner as also against the said Ms. Vaishali Shah, me being entitled to the benefit of the monetary claim against M/s.Vaibhav Developers, the Petitioner and the said Ms.Vaishali Parikh, and being the Sole Executrix under the Will of the said deceased.

5. In the aforesaid circumstances, I submit that this Hon'ble Court be pleased to allow the present Writ Petition as prayed for and be further pleased to quash and set aside the impugned FIR being CR No. 49 of 2015 registered with the Respondent No, 2 as also the impugned proceedings being Case No.1688/PW/2015 pending before the Ld. Metropolitan Magistrate 65th Court, Andheri, Mumbai.

6. I hereby unconditionally and irrevocably state and consent that the said disputes were civil disputes between the private parties and the same are amicably resolved and I have withdrawn and hereby withdraw all the allegations and contentions in that regard and I consent for quashing of the said F.I.R. being C. R. No. 49 of 2015 and the Pending Case No.1688/PW/2015. The said deceased has also filed criminal cases against the Petitioner & Ors. u/s. 138 of Negotiable Instruments Act, 1881 which also I have agreed to withdraw once the said FIR is quashed by this Hon'ble Court.

5. Having considered these facts, we are of the opinion that the FIR can be quashed by consent of Respondent No.1 as the dispute related to a commercial transaction which now the parties

have settled and keeping the prosecution pending would be a needless harassment to all the parties and not likely to result in conviction. The learned APP, on instructions, states that there are no cases of identical nature pending against the Petitioner nor any antecedents. As a result, the petition is allowed in terms of prayer clause (a).

6. The Petitioner will pay Rs.15,000/- to Mumbai Police Welfare Fund (A/c.No.465010100008695, IFSC No.UTIB0000465 Axis Bank, Lamington Road Branch) within a period of four weeks. The order passed today is conditional to the payment.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)