

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

WRIT PETITION NO. 3138 OF 2021

Abhay Chandmal Bhandari & Ors.

...Petitioners

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.Vinayak R. Patil for Petitioners.

Smt.Aruna S. Pai, PP for State.

Mr.Omneel Ashok Jadhav for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 4 FEBRUARY 2022

P.C. :

. By the present writ petition, the Petitioners are praying for quashing and setting aside FIR dated 13 March 2018 registered by Navghar Police Station, Thane Rural against the Petitioners for the offences punishable under Sections 420, 406, 466, 467, 468 and 471 read with 34 of IPC and Sections 3, 8 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

2. Respondent No.2 is the first informant in the matter, who had lodged a complaint against the Petitioners on 13 September 2018 alleging therein that the complainant booked a flat in a project, of which Petitioner No.1 claimed that he and his associate partners were developing housing project, namely, Mithila Heights at Survey No.330, Hissa No.5 and 6 Bhayander East, Dist.Thane. It is further alleged that the complainant

deposited Rs.12 lakhs, i.e. Rs.5 lakhs in cash and Rs.7 lakhs by cheque, whereupon Petitioner No.1 issued an allotment letter and it was signed by Petitioner No.4. It is further alleged that at the time of booking, it was informed by Petitioner No.1 to the complainant that possession of the said flat will be handed over within three years. However, subsequently, it was revealed by the complainant that no permission was issued in favour of Petitioner No.1 by Mira-Bhayander Municipal Corporation. Thereupon, Petitioner No.1 offered a flat in a project, namely, Raviraj Housing Prince Project, instead of Mithila Heights, to which the complainant agreed for and deposited further sum of Rs.15 lakhs with Petitioner Nos.1 to 3. It is alleged that in spite of payment made to the Petitioners, possession was not handed over and therefore, the complainant demanded his money back and therefore, FIR was lodged. By the present petition, the said FIR is sought to be quashed and set aside.

3. We have heard learned Counsel for the respective parties.

4. Learned Counsel for the Petitioners states that after registration of the FIR, the Petitioners and Respondent Nos.2 and 3 have amicably settled the matter and executed a deed of cancellation on 11 July 2018 whereby Respondent Nos.2 and 3 agreed to withdraw all the allegations against the Petitioners and in future they will not claim any right on the basis of allotment letter. There is also a mention of payment of Rs.7 lakhs to Respondent Nos.2 and 3. The receipt acknowledging the amount of Rs.7 lakhs is filed on record. Learned Counsel for the Petitioners, therefore, submits that in view of the settlement, the FIR in question may be quashed and set aside.

5. Learned Counsel appearing for Respondent Nos.2 and 3 is not disputing the fact of settlement and he submits that Respondent Nos.2 and 3 have no objection if the present writ petition is allowed and the FIR in question is quashed and set aside.

6. In the above backdrop, we have perused the FIR and after going through the contents of the FIR, we have no doubt that the dispute involved in the present matter is a commercial nature and no public element of law is involved in the crime.

7. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Madan Mohan Abbot vs. State of Punjab**, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforesaid fact-situation, the continuation of prosecution of the Petitioners in the instant case will amount to abuse of the process of Court and therefore, it is in the fitness of things to quash the FIR and proceeding in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

8. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of **Narinder Singh vs. State of Punjab** [2014 AIR SCW 2065], we are of the considered view that there is no impediment in quashing the criminal proceedings in question.

9. In that view of the matter, the writ petition is allowed. As the police machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle Petitioners and Respondent Nos.2 and 3 with cost.

10. Petitioner Nos.1 to 3 and 4 to deposit cost of Rs.1,00,000/- each and Respondent Nos.2 and 3 to deposit Rs.50,000/- each. Petitioner Nos.1 to 3 and 4 and Respondent Nos.2 and 3 to pay this amount to Tata Cancer Hospital within a period of four weeks and place on record the receipt of the deposit.

11. For the quashment to take effect, Petitioner Nos.1 to 3 and 4 and Respondent Nos.2 and 3 shall pay the said cost and produce the receipt thereof on the file of this Court within a period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, the petition shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as non-est. Registry will then intimate the concerned Police Station that subject FIR shall not be treated to have been quashed and that police shall proceed against the Petitioners in accordance with law.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)