

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1889 OF 2021

1. Manish Ashokkumar Jain
2. Sanjay Narayan Rawal
3. Manish Kanhaiyalal Jain ...Petitioners

Versus

1. The State of Maharashtra
2. Arihant Choudhary ...Respondents

Mr. Darshil Thakkar i/b Ms. Priyanka Chumbhale for the Petitioners.

Mr. J.P.Yagnik, A.P.P for the Respondent-State.

Mr. Taraq Sayed i/b Mr. Vrushabh Savla for the Respondent No.2.

CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.
DATE : 26th SEPTEMBER, 2022

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1-State. Mr. Taraq Sayed

waives notice on behalf of the respondent No.2.

3. By this petition, the petitioners seek quashing of the FIR bearing C.R. No. 528 of 2020 registered with the L. T. Marg Police Station, Mumbai, for the alleged offence punishable under Section 408 r/w 34 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. The respondent No.2 (original complainant) was in the business of gold and diamonds. He had two staff members i.e. one Manish Jain (petitioner No.1) and one Aditya Sharma. It appears that for purchase of gold, the respondent No.2 required Rs.80,00,000/- and hence, he borrowed the same from Mr. Gaurav Dupiya. The said money was sent by Gaurav Dhupia on 26th August, 2020, through Umesh Aangadiya Courier Service. It appears that at around 11.30 a.m., the respondent No.2 instructed Manish Jain to collect the said cash and hand over the same to the owner of M/s Avani Gold and in turn, to collect the gold from him. It appears that at around 1.25 p.m., respondent No.2 received a call from Umesh

Angadiya Courier Service stating that he had handed over the said amount i.e. Rs. 80,00,000/- to Manish Jain (petitioner No.1). After a few minutes, when the respondent No.2 tried to contact Manish Jain (petitioner No.1) on his mobile, his mobile was found to be switched off. As the petitioner No.1 had fled with Rs.80,00,000/-, the aforesaid FIR was lodged by the respondent No.2.

5. During the course of investigation, it was revealed that the petitioner Nos. 2 and 3 were also involved in the commission of the aforesaid offence.

6. It appears that in the interregnum, the parties amicably settled their dispute and as such, the petitioners have handed over a sum of Rs.77,95,600/- to the respondent No.2. The balance amount of Rs.2,04,400/- is recovered during the course of investigation and the same is presently with the respondent No.1 i.e. the police of the L.T.Marg Police Station, Mumbai.

7. The respondent No.2 has filed an affidavit dated 18th July, 2022, which is at page 62 of the petition, duly affirmed before the

Assistant Registrar, High Court, Mumbai. In the said affidavit, the respondent No.2 had stated that he has received a sum of Rs.77,95,600/- from the petitioner No.1 and as such, he has no grievance as against the petitioners. He has further given his no objection to quashing of the proceedings i.e. the aforesaid C.R and proceeding consequential thereto.

8. Admittedly, chargesheet has been filed in the said case, however, the said chargesheet has not been numbered. The respondent No. 2 is present in Court. Learned Counsel for the respondent No. 2 has tendered a self attested xerox copy of the aadhar card of the respondent No. 2. The same is taken on record. On questioning, he re-iterates what is stated by him in his affidavit i.e. he has no objection for quashing of the FIR bearing C.R. No.528 of 2020 registered with the L.T.Marg Police Station, Mumbai.

9. It appears that the respondent No.2 has received Rs.77,95,600/- from the petitioner No.1 and that the balance amount of Rs.2,04,400/- seized by the police is currently with the police.

10. Considering the nature of dispute, the amicable settlement between the parties, the affidavit of the respondent No.2 that he has no objection for quashing of the proceedings and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*², there is no impediment in allowing the petition. No useful purpose would also be served in continuing with the proceedings.

11. The petition is accordingly allowed and the FIR bearing C.R. No. 528 of 2020 registered with the L.T. Marg Police Station, Mumbai and the proceeding arising therefrom, are quashed and set-aside.

12. On an application being made by the respondent No.2, the Police to take steps to return Rs.2,04,400/- to the respondent No.2, on the respondent No.2 furnishing proof of identity, within three weeks from the date of the said application.

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

13. The petitioner to deposit a sum of Rs.50,000/- , with the **Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465**, as costs. The said costs to be deposited within three weeks from today.

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

15. Matter to be listed for recording compliance of the said deposit on **14th November, 2022**.

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.