

DINESH
SADANAND
SHERLA
Digitally
signed by
DINESH
SADANAND
SHERLA
Date:
2022.06.30
17:28:05
+0500

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2065 OF 2017

Sanjay Bhosale and ors.

... Petitioners

V/s.

The State of Maharashtra and ors.

... Respondents

Mr. Dilip H. Shukla for the Petitioners.

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

Mr. Kanhaiya S. Yadav i/b Mr. Sandeep P. Dubey for the
Respondent No.2.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 24 JUNE 2022.

P.C.

. Heard the learned Counsel for the parties.

2. Considering the order to be passed in the petition, the matter
is taken up for disposal forthwith.

3. The Petitioners have sought the following relief:

*“b) this Hon’ble Court be pleased to quash FIR
No.32/2017 registered by Goregaon Police Station,
Mumbai against the Petitioners.”*

4. The learned Counsel for the Petitioners states the reason given
by the Petitioners for quashing the FIR is that the Respondent No.2-

Complainant has given his consent, which fact is reiterated by the learned Counsel for Respondent No.2.

5. The gist of the FIR is that the Respondent Nos.2 and 3 had entered into an agreement with the Petitioners for allotment of shop. According to the Respondent Nos.2 and 3, the construction was not commenced, neither shop was given nor amounts returned. With these allegations, FIR was registered under Sections 420, 406 read with 34 of the Indian Penal Code and 3 (1)(F) and 13 of the Maharashtra Ownership Flats Association Act.

6. The learned Counsel for the Petitioners states that the affidavit is filed by the Respondent No.2 giving consent and in the affidavit details are given as to how the consent terms have arrived at. The consent of Respondent No.2 was noted in the order dated 28 February 2022 and the matter was adjourned. In the consent affidavit, it is stated that the Petitioners have given demand drafts of Rs.5500000/- and Rs.700000. The learned Counsel for the Respondent No.2 states that these amounts have been received. The learned Counsel for the Petitioner and the Respondent No.2 fairly pray that the FIR be quashed.

7. The learned APP, on instructions from PSI B.E. Satam, Goregaon Police Station, states that there are no other victims such

as Respondent Nos.2 and 3 in respect of the Petitioners.

8. Having considered the contents of FIR, it is clear that it is a commercial dispute where shop was booked and now the money has been returned. The affidavit of Respondent No.2, demand drafts and consent terms make the position clear. Therefore, we are of the opinion that case is made out for quashing of the FIR by consent in light of the law laid down by the Supreme Court in case of ***Gian Singh vs. State of Punjab***¹. Accordingly, Writ Petition is allowed in terms of prayer clause (b).

9. The Petitioners will pay costs of Rs.25000/- to the Police Welfare Fund viz. “*Mumbai Police Welfare Fund Account No.465010100008693*” within six weeks from today and this order is conditional upon payment of costs.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

¹ (2012) 10 SCC 303