

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

CRIMINAL WRIT PETITION NO.2868 OF 2022

- | | | |
|----|---------------------------|----------------|
| 1. | Pandharinath Bapu Lohar | |
| 2. | Abdul Rehman Bawa | ...Petitioners |
| | Versus | |
| 1. | State of Maharashtra | |
| 2. | Mohammad Hussain Kashmiri | ...Respondents |

Mr. Krishna L. Pawar, for the Petitioners.

Mr. K. V. Saste, A.P.P for the Respondent No.1– State.

Mr. Kartik Garg, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.***

DATE : 25th NOVEMBER 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. Garg waives notice on behalf of the respondent No.2.

3. By this petition, the petitioners seek quashing of the FIR bearing C.R. No. 82 of 2021, registered with the CBD Belapur Police Station, Navi Mumbai, for the alleged offences punishable under Sections 406, 420, 465, 467, 471 r/w 34 of the Indian Penal Code. Quashing is sought on the premises, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2 (original complainant), he is in the business of construction in the name and style as “M/s. Royal Builder and Developers.” Respondent No.2 has stated, that the petitioner No.1, a farmer from Belapur village was entitled to a plot of land, admeasuring 300 sq. meters from CIDCO at Ulwe Node under the 12.5% scheme. The respondent No.2 has alleged that there was a transaction which took place between him and the petitioner No.1 and that pursuant thereto, he paid a sum of Rs.2 lakhs to the petitioner No.1 on 29th March 2010 by cheque; that on 17th April 2010, an Agreement to Sale was executed between the parties i.e. the respondent No.2 and the

petitioner No.1; that as per the agreement, an amount of Rs.60 lakhs was decided to be paid as consideration for sale (at the rate of Rs.20,000/- per sq. meter). The said amount of Rs.60 lakhs was to be paid in certain installments to the petitioner No.1. The respondent No.2 has further alleged that as per the agreement, he paid Rs.12 lakhs in cash and through cheque to the petitioner No.1, after publication of paper notice and that infact he paid Rs.2 lakhs more than what was agreed between the parties. It appears that on 20th May 2011, a letter of intent was issued by CIDO, to the petitioner No.1 in respect of the plot No.61B, Sector 19B, Ulwe Node and on 29th February 2012, a letter of allotment was issued to him, by the CIDCO. Thereafter in March 2012, a Lease Deed was executed between the CIDCO and the petitioner No.1, however, the petitioner No.1 started avoiding him i.e. the complainant. Pursuant thereto, the respondent No.2 filed a Civil Suit in the Civil Court at Panvel bearing Special Civil Suit No.195 of 2012, as against the petitioner No.1. As during the pendency of the said Suit, the respondent No.2 learnt that in 2016, the petitioner No.1 had entered into a Tripartite Agreement

with CIDCO and one Abdul Rehman Bawa i.e. petitioner No.2, he impleaded the petitioner No.2 as party to the Civil Suit. According to the respondent No.2, in November 2016, the petitioner Nos.1 and 2 executed a Tripartite Agreement with the CIDCO. According to the respondent No.2, he suspected foul play on the part of the petitioners, in the Agreement to Sale produced before the CIDCO, and on examining, he found that the 100 rupees stamp paper used for preparing the agreement was ante-dated. Pursuant thereto, the respondent No.2 lodged the aforesaid C.R. as against the petitioners, alleging the aforesaid offences. We are informed that till date, charge-sheet has not been filed in the said case.

5. During the pendency of the aforesaid Suit, the parties entered into an amicable settlement and filed a Memorandum of Understanding ('MOU') before the Civil Court at Panvel. The said MOU is at Exhibit - 'B', page 26 of the petition. Pursuant to the said MOU, the Civil Suit has been withdrawn by the respondent No.2, as against the petitioners.

6. Learned Counsel for the respondent No. 2 has tendered an affidavit of the respondent No.2 (original complainant) dated 14th October 2022, duly affirmed before the Assistant Registrar, High Court, Appellate Side. To the said affidavit is annexed a self-attested photocopy of the aadhar card of the respondent No.2. The said affidavit is taken on record. In the said affidavit, the respondent No.2 has stated that the matter has been amicably settled with the help of the National Lok Adalat and that pursuant thereto, the MOU dated 25th November 2021 and Supplementary MOU dated 31st December 2021 was entered into between the parties. It is further stated that in the MOU that it is agreed that the petitioner No.2 will allot, transfer and handover free of cost, two residential premises each comprising of one BHK i.e. Flat Nos.203 and 204 in a project known as “The Heritage” situated at plot No.238, Sector 17, Ulwe, Navi Mumbai. It is also agreed that the petitioner No.2 in addition to the above will also pay a sum of Rs.16 lakhs as and by way of final settlement to the respondent No.2. The learned counsel for the respondent No.2 states

that pursuant to the said MOU, the petitioner No.2 has handed over the said two flats as agreed and has also handed over a cheque of Rs.16 lakhs dated 14th October 2022 today. Respondent No. 2 is present in Court. On being questioned, he re-iterates what is stated by him in his affidavit. He states that he has received 2 flats. He states that subject to the cheque being honoured, he has no objection to the quashing of the C.R registered at his behest, as against the petitioners. Learned Counsel for the respondent No.2 has identified the respondent No.2 and the learned APP has also verified the original aadhar card of the respondent No.2.

7. Considering the nature of dispute, the amicable settlement between the parties, the MOU entered into between them, the affidavit filed by the respondent No.2, there is no impediment in allowing the petition.

8. The petition is accordingly allowed and the FIR bearing

C.R. No. 82 of 2021, registered with the CBD Belapur Police Station, Navi Mumbai, is quashed and set-aside.

9. The petitioner No.2 to deposit a sum of Rs.25,000/-, with the **Central Police Welfare Fund bearing Account No. 914010029005759, IFSC No. UTIB0000060**, as costs. Similarly, the respondent No.2 to also deposit a sum of Rs.25,000/-, with the **Central Police Welfare Fund bearing Account No. 914010029005759, IFSC No. UTIB0000060**, as costs. The said costs to be deposited within three weeks from today.

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

11. It is made clear that Rule is granted subject to deposit of costs and subject to the cheque being honoured.

12. Stand over to 23rd December 2022, for recording compliance of the said deposit of costs.

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

R. N. LADDHA, J.

REVATI MOHITE DERE, J.