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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2396 OF 2022**

M/s. Nirmal Developers and ors. ... Petitioners
V/s.
The State of Maharashtra and anr. ... Respondents

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Karma Vivan i/b Mr. P.D. Desai for the Petitioners.
Mrs. S.D. Shinde, APP for the Respondent No.1 – State.
Mr. Prashant D. Jadhav for Respondent No.2.

**CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 1 AUGUST 2022.**

P.C.

. The present petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report (MECR) No.03 of 2022 (hereinafter referred to as “FIR”, for short) dated 7 June 2022 registered at Mulund Police Station, Mumbai for the offences punishable under Sections 420, 406, 467 and 468 of the Indian Penal Code and under Sections 13 and 14 of Maharashtra Ownership of Flats (Regulation of the Promotion, Construction , Sale, management and Transfer) Act, 1963.

2. The aforesaid crime came to be registered at the instance of Respondent No.2. According to the Respondent No.2 in the year 2018, he had booked a flat in the housing project of the Petitioners at Mulund and made payments of Rs.1489342/-. It is alleged that neither the possession of the flat was handed over nor the amount was returned.

3. The learned Senior Advocate for the Petitioners and the learned Counsel for the Respondent No.2 jointly submit that the parties have amicably settled the dispute which is predominately of civil character. It is submitted that no purpose would be served by keeping the prosecution alive, in view of the settlement arrived at between the parties. The learned Counsel for the parties submit that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Narinder Singh and ors vs. State of Punjab and anr*¹.

4. The learned APP, on instructions from PI Nagraj Majage attached to Mulund Police Station, submits that there are other similar cases registered against the Petitioners. The Petitioners have, however, filed the affidavit that, if there are any other flat purchasers, who have claims in relation to project in question, then they will endeavour to settle their claims as per law.

1 (2014) 6 SCC 466

5. Respondent No.2 has filed consent affidavit dated 4 July 2022. The Respondent No.2 has stated that he has received the entire amount which was to be paid to him in terms of settlement. Respondent No.2 has stated that he has no objection if the FIR in question is quashed in view of the settlement arrived at between the parties.

6. The Hon'ble Supreme Court in *Narinder Singh and ors vs. State of Punjab and another*² has held :

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings

² (2014) 6 SCC 466

is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.”

7. We have examined the facts of the present case in the light of principles laid down by the Hon’ble Supreme Court in the case of *Narinder Singh (surpa)*. The dispute appears to be predominately of

civil nature. In view of the settlement between the parties, Respondent No.2 is not going to support the prosecution case and therefore, possibility of conviction is remote and bleak. Nothing fruitful will therefore come out of the prosecution in question. Considering these facts and circumstances, the petition deserves to be allowed. Hence, Writ Petition is allowed in terms of prayer clause (b), which reads thus:

“b. That this Hon’ble Court may be pleased to kindly quash and set aside the FIR No.03/2022 dated 7th June 2022 registered by Mulund Police Station under Sections 420,406,467 and 468 of the IPC read with Sections 13 and 14 of MOFA and all consequent actions emanating therefrom on such terms and conditions that this Hon’ble Court may deem fit and proper;”

8. The Petitioners and Respondent No.2 will pay amount of Rs.50,000/- (Rupees Fifty Thousand) and Rs.25,000/- (Rupees Twenty Five Thousand) respectively to the Police Welfare Fund viz. *“Mumbai Police Welfare Fund Account No.465010100008693; IFC code: UTIB0000465; Bank : Axix Bank ; Branch: Lamington Road”* within six weeks from today and this order is conditional upon payment of costs.

9. Writ Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)