

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

CRIMINAL APPLICATION NO. 562 OF 2020

1. Conwood Housing Private Limited
 2. Mr. Iqbal Ismail Shivani
 3. Mr. Rizwan Iqbal Shivani
- ... Applicants

v/s.

1. Mr. Shyam Harinath Jaiswal
 2. The State of Maharashtra
- ... Respondents

Mr. M.S. Bhandari i/b. Ms. Pranjali Bhandari for the Applicants.

Mr. Y.M. Nakhwa, APP for the State.

Mr. Dharmesh Jain i/b. Abhay Ramesh for Respondent No.1.

Mr. Pandit Rasam, PSI, Malad Police station present.

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

DATE : 24th NOVEMBER 2022

P.C. :

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 APP waives notice

on behalf of the Respondent No.2-State and Mr. Dharmesh Jain waives notice on behalf of Respondent No.1.

3. By this application, preferred under Section 482 of the Criminal Procedure Code, the applicants seek quashing of the FIR, registered vide C.R. No.474/2018 with the Malad Police Station, Mumbai for the alleged offences punishable under Sections 409, 420 r/w 34 of the IPC. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. The Applicant No.1 is a developer i.e. a private registered company of which Applicants No.2 & 3 are the Directors. It appears that the Applicants are in the business of real estate development at Malad. According to the Respondent No.1 (original Complainant) as there were certain non-compliances by the Applicant in the residential building constructed by them, the aforesaid FIR was lodged i.e. the allegations are of not obtaining O.C. and of not conveying the property in favour of the Society. We are informed that

charge-sheet has been filed in the said case and the case is presently pending before the learned Metropolitan Magistrate Court, at Borivali, being **CC No. PW/2403271/2022**.

5. It appears that in the interregnum, during the pendency of the aforesaid proceeding, the parties amicably settled their dispute.

6. Learned Counsel for the Respondent No.1 has filed an affidavit of the Respondent No.1 dated 26th February 2021. The said affidavit is duly affirmed before the Notary. In the said affidavit, the Respondent No.1 has stated that due to certain non-compliances in the residential building which was constructed by the Applicants, there was a dispute and hence the FIR was lodged. It is stated that the Applicants have complied with the terms and conditions stipulated in the Consent Terms dated 26th September 2018, entered into between the parties. To the said affidavit is annexed a Special Body General Meeting Resolution dated 18th September 2020. It appears from the said Resolution that a Special Body General Meeting was held on 18th

September 2020, where all members of the Society resolved and agreed to accord consent for quashing of the aforesaid FIR registered with the Malad Police Station, as against the Applicants. It was resolved in the said meeting to withdraw the Suit No.1524/2018 filed in the High Court and to apply for refund of court fees as per rules. The Respondent No.1 is present in Court. On questioning he reiterates what is stated by him in the affidavit. Respondent No.1 has been identified by his Counsel. Learned Counsel for the Respondent No.1 has tendered a photocopy of the Aadhar Card of the Respondent No.1 duly attested by him and the original is verified by the learned APP. The said Aadhar Card is taken on record.

7. Considering the nature of dispute, the Consent Terms entered into between the parties, the affidavit of the Respondent No.1 and the judicial pronouncements of the Apex Court in this regard 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 application.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

8 The application is accordingly allowed and the FIR, registered vide C.R. No.474/2018 with the Malad Police Station, Mumbai and consequently, the proceeding pending before the learned Metropolitan Magistrate, Borivali, Mumbai, are quashed and set-aside.

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

10. Learned counsel for the respondent no.1 to file his *Vakalatnama*, if not filed, on behalf of the respondent no.1, within two weeks of the uploading of this order.

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

R.N. LADDHA, J.

Lata Panjwani, P.S.

REVATI MOHITE DERE, J.