

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 859 OF 2021**

Gaurisuta Travel Management Services Ltd.
and another

... Applicants

Versus

Vibha Ajay Massand and others

... Respondents

.....

Mr. Himanshu Shinde for the Applicants.

Mr. Ashok Singh for Respondent No.1.

Mrs. M.H. Mhatre, APP for the State.

.....

**CORAM : NITIN JAMDAR AND
 N.R. BORKAR, JJ.**

DATED : 17 AUGUST 2022

P.C. :-

. Heard the learned Counsel for the parties.

2. The Applicants have sought the following prayer by way
of this Application.

“(a) This Hon’ble Court may kindly quash and
set aside the F.I.R. No.108/2017 registered with
Meghwadi Police Station for offence under
section 420, 406 r/w. 34 of IPC and its
consequent investigation proceedings filed at the
instance of the Respondent No.2 (Original
Complainant).”

3. The learned Counsel for the Applicants and the Respondents-Complainant jointly pray that the FIR be quashed as the Respondents-Complainant have given their consent for the same. The learned Counsel for the parties state that the dispute that led to filing of the FIR was a commercial dispute which is resolved on the monetary terms. The learned Counsel for the parties states that certain amount was deposited in this Court during the hearing of the anticipatory bail application and that parties have agreed that the amount would be withdrawn by Respondent No.1 as the amount agreed to be paid to the Respondent No.2 has already been paid. The learned Counsel relied upon the decision of the Supreme Court in the case of *Gian Singh vs. State of Punjab*¹.

4. We have perused the FIR. The FIR was lodged by the Complainant stating that they had booked their holiday through the Petitioner Agency and the money was taken from the Respondents-Complainant for the travel and even airline tickets were not booked, upon demand money was not returned and thereby the Respondents-Complainant were cheated.

5. In the Application, the Applicants have stated as under :

“(D) It is submitted that even as per the FIR, since Mrs. Vibha Massand herself had paid the entire amount of Rs.12,90,000/- (Twelve

1 2012(10) SCC 303

Lakhs Ninety Thousand) for her family as well as for her friends, therefore she alone is entitle to receive an amount of Rs.13,00,000/- (Thirteen Lakhs only) from the total settlement amount and no other person (claiming to be her friend) has ever claimed or is entitle to receive any share of money from the said amount of Rs.13,00,000/- (Thirteen Lakhs only).

(E) It is submitted that in view of the above as Mrs. Vibha Massand is entitle to receive an amount of Rs.13,00,000/- out of the total settlement amount, therefore the said payment is agreed to be done in the following manner :-

1) Mrs. Vibha Massand will be entitle to withdraw and be permitted to receive an amount of Rs.11,85,000/- (Eleven Lakhs Eighty Five Thousand only) from the registry of this court which was deposited by the applicants as per order dated 12/7/2018 passed in vide ABA No.780/2018.

2) The applicants have agreed to pay the remaining amount of Rs.1,15,000/- (One Lakh Fifteen Thousand only) by means of Demand Draft bearing number - "507163" dated – 12/07/2021 drawn on ICICI Bank (Uppal Kalan Branch – Hyderabad) in favour of Mrs. Vibha Ajay Massand at the time of filing her final affidavit/No Objection or before the court at the time of final hearing.

(F) It is submitted that to safeguard the interest of the applicants anytime in future, the Respondent No.2 (Vibha) undertakes and

promises to indemnify the applicants, if any third person ever makes any claim or demand for any share of money from the total claim amount of Rs.19 Lakhs 70 Thousand as mentioned in the FIR.

(G) It is submitted that Mr. Deepak Arora has agreed to receive the remaining amount of Rs.5,40,000/- (Five Lakhs Forty Thousand) from the total settlement amount of Rs.18.40 Lakhs, for the settlement of his entire claim of (Rs.6,70,000/-) mentioned in the FIR and the said payment of Rs.5,40,000/- (Five Lakhs Forty Thousand) has been agreed to be done by way of Demand Draft bearing number - “507162” dated – 12/07/2021 drawn on ICICI Bank (Uppal Kalan Branch – Hyderabad) in favour of Mr. Deepak Kumar Arora at the time of filing his final affidavit / No Objection or before the court at the time of final hearing. (The copies of both the demand draft is hereto annexed and marked as “Exhibit-D” Colly.)”

6. In response, the Respondent No.1 on Affidavit filed in this Application has stated as under :

“2. I say that during the pendency of the investigation, with the help of the common friends and well wishers both parties above named have come to an amicable settlement of the present matter and both the parties wish to give a permanent settlement and disposal to the present proceedings on the following manner :-

i) I will be entitle to withdraw and be permitted to receive an amount of Rs.11,85,000/-

(Eleven Lakhs Eight Five Thousand only) from the registry of this court which was deposited by the applicants as per order dated – 12/7/2018 passed in Anticipatory Bail Application No.780/2018.

(ii) I say that the applicants have agreed to pay the remaining amount of Rs.1,15,000/- (One Lakh Fifteen Thousand only) by means of Demand Draft in my favour at the time of filing my final affidavit/No Objection or before the court at the time of final hearing.”

7. The Respondent No.2 on Affidavit filed in this Application has stated as under :

“3. I say that I have agreed to receive the remaining amount of Rs.5,40,000/- (Five Lakh Forty Thousand only) from the total settlement amount of Rs.18,40,000/-, for the settlement of his entire claim of Rs.6,70,000/- mentioned in the FIR and the said payment of Rs.5,40,000/- has been agreed to be done by way of Demand Draft in my favour at the time of filing of my final Affidavit/No Objection or before the court at the time of final hearing.

4. I say that to safeguard the interest of the applicants anytime in future, I undertakes and promises to indemnify the applicants, if any third person ever makes any claim or demand for any share of money from the total claim amount of Rs.5,40,000/- as mentioned in the FIR.”

8. Having perused the FIR, the above mentioned contentions of the parties, it is clear to us that the dispute that led to filing of the FIR was a commercial dispute which now stands resolved on the monetary terms. The receipt of demand draft of the balance amount is confirmed by the learned Counsel for the Respondents. In light of this settlement, keeping the prosecution pending could be a needless harassment to the parties and is not likely to result into conviction. The dicta of Hon'ble Supreme Court in the case of *Gian Singh (supra)* is squarely applicable to the facts of the present case.

9. Accordingly, the Application is allowed in terms of prayer clause (a) as against the Applicants.

10. The Applicants shall pay an amount of Rs.10000/- to the Mumbai Police Welfare Fund within four weeks from today. This order is passed in this Application is conditional upon payment.

11. Liberty to Respondent No.1 to produce this order before the Registry for withdrawal of the amount.

12. The Criminal Application is accordingly disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)