

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4531 OF 2022**

1. Raeesh Mohammed Ali	]	
2. Pinki Raeesh Mohammed Ali	]	Petitioners
Vs.		
1. State of Maharashtra	]	
2. Manohar Yadav Karche	]	Respondents

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Mr. Sajid Shaikh i/b Kaleeyantey Law Firm, for Petitioners.

Mr. J.P. Yagnik, A.P.P, for Respondent No.1 -State.

Ms. Priyanka Chavan i/b Ms. Nayana Talekar, for Respondent No.2.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 13th DECEMBER, 2022.

P.C.

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1-

State and Ms. Chavan, learned Counsel waives notice on behalf of the respondent No.2.

3. By this petition, preferred under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”), the petitioners seek quashing and setting aside of the First Information Report (for short “F.I.R”) bearing C.R. No.277 of 2021 dated 13th August, 2021 registered with the Economic Offences Wing, Mumbai for the alleged offences punishable under sections 420, 406 r/w 34 of the Indian Penal Code (initially registered with the Vashi Police Station and subsequently transferred to the Economic Offences Wing). Quashing is sought on the premise that the parties have amicably settled their dispute.

4. Learned Counsel appearing for the petitioners submits that the parties have amicably settled their dispute and as such, the respondent No.2 has no objection if the aforesaid C.R is quashed and set aside, in view of the amicable settlement between the parties.

5. Perused the papers. It appears that the petitioners were the owners of the commercial premises, situated at Kiosk No.- 10B, Kiosk No. - 9A and Kiosk No. - 10C Vashi Railway Station, Sector - 30, Navi Mumbai. The petitioners were running a restaurant, in the said premises. It appears that the petitioner No.1 had secured financial assistance from DMK Jaoli Sahakari Bank Limited for purchase of the said Kiosk and was paying EMI's to the said Bank. It appears that due to COVID-19, lock down was imposed, and, therefore, the business of the petitioners was affected. Resultantly, the petitioners closed down their business, resulting into loss. As a result of the same, the petitioners were unable to pay EMI's to the Bank, pursuant to which, the petitioners' account was declared as a Non-Performing Asset (N.P.A). It appears that the Director of the said Bank suggested to the petitioners that they sell two commercial premises, pursuant to which, the respondent No.2 entered into an agreement with the petitioners with respect to the premises in question. It appears that after the agreement for sale was entered into between the parties i.e the respondent No.2 and the

petitioners, the petitioners entered into a leave and licence agreement with one Dhananjay Prajapati, pursuant to which, Dhananjay Prajapati started running a restaurant in the premises, in question. Pursuant thereto, the respondent No.2 lodged the aforesaid complaint/F.I.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.

6. During the pendency of the investigation in the said case, the parties amicably settled their dispute. It appears from the document annexed at page 64, that the petitioners have terminated the leave and licence agreement entered into between them and Dhananjay Prajapati. It appears from the said document that the petitioners have even refunded the deposit amount to Dhananjay Prajapati. The receipt relied upon by the learned Counsel for the petitioners, is at page No.70 of the petition. It appears that, pursuant thereto, possession of the premises in question was handed over to the respondent No.2 after executing a sale deed between the petitioners and the

respondent No.2, in respect of the said premises. Learned Counsel for the respondent No.2 has relied on the consent affidavit of the respondent No.2, which is at page 94 of the Petition. In the said affidavit dated 16th June, 2022 duly affirmed before the Notary, the respondent No.2 in paragraph 8 has stated that the petitioners have given him the possession letter signed by them at the time of execution and registration of the Deed of Conveyance as well as keys of the said two properties i.e Kiosk No.9A and 10B. In paragraph 16 of the said affidavit, he has stated that the petitioners had handed over possession of Kiosk No.9A and Kiosk No.10B to him. In the said affidavit, he has given his no objection for withdrawal of the F.I.R registered with Vashi Police Station, in view of the amicable settlement between the parties.

7. The Respondent No.2 is present in person. On being questioned, he reiterates what is stated by him in the consent affidavit. He states that pursuant to the possession, he is running a restaurant in the premises in question. Learned Counsel for the respondent No.2 has tendered a photo copy of the Aadhar Card

of the respondent No.2 duly attested by him. The same is taken on record and the original Aadhar Card is verified by the learned A.P.P. Learned Counsel for the respondent No.2 has identified the respondent No.2.

8. Considering the nature of the dispute, which is *prima facie*, civil in nature, the amicable settlement between the parties, the consent affidavit of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in **Gian Singh Vs. State of Punjab and another**¹ and **Narinder Singh and others Vs. State of Punjab and another**², there is no impediment in allowing the Petition.

9. The petition is accordingly allowed and C.R. No.277 of 2021 registered with the Economic Offences Wing, Mumbai for the alleged offences punishable under sections 420, 406 r/w 34 of the Indian Penal Code, is quashed and set aside.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

10. The petitioners to deposit costs of Rs.15,000/- each, with the Central Police Welfare Fund bearing Account No.914010029005759, IFSC No.UTIB00000060. The said costs to be deposited within two weeks from today.

11. Rule is made absolute in the aforesaid terms and the Petition is disposed of.

12. Matter be listed on **11th January, 2023**, for recording compliance of the order, directing deposit of costs.

13. All the parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]