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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3532 OF 2021**

Ashutosh A. Yadav and anr.

... Petitioners

V/s.

State of Maharashtra and anr.

... Respondents

Mr. D.K. Shukla for the Petitioners.

Mrs. S.D. Shinde, APP for the Respondent No.1 – State.

Mr. Abhinesh Yadav for Respondent No.2.

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

DATE : 3 AUGUST 2022.

P.C.

. The present petition under Section 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No.108 of 2021 (hereinafter referred to as “FIR”, for short) dated 21 February 2021 registered at Borivali Police Station, Mumbai against the Petitioners for the offence punishable under Sections 379 and 420 of the Indian Penal Code and Section 66(D) of the Information Technology Act and the criminal case bearing C.C. No. 2777/PW/2022 pending on the file of 26th Metropolitan Magistrate Court at Borivali, Mumbai arising out of said FIR.

2. The aforesaid crime came to be registered at the instance of Respondent No.2/Complainant. On 20 February 2021, the Respondent No.2 found that an amount of Rs.9,00,000/- was unauthorisedly transferred from his bank account through RTGS/NEFT/IMPS to other bank accounts. He therefore, lodged the report and during investigation it was found that the said amount was transferred by his nephew Roshan Kunder by accessing relevant information from mobile phone of the Complainant to the bank accounts of present Petitioners, who are friends of said Roshan Kunder.

3. The learned Counsel for the Petitioners and the learned Counsel for the Respondent No.2 jointly submit that the parties have amicably settled the dispute. It is submitted that the FIR in question came to be lodged due to some misunderstanding. 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 Respondent No.2 has filed consent affidavit dated 20 October 2021. The Respondent No.2 has stated that he received

¹ (2014) 6 SCC 466

back the amount which was transferred from his bank account. The Respondent No.2 has stated that he has no objection if the FIR in question and criminal case are quashed *qua* the Petitioners.

5. The parents of Petitioners filed the affidavits dated 30 July 2022. They have stated that they would take all possible steps to see that the Petitioners do not indulge in such activities.

6. The Hon'ble Supreme Court in *Narinder Singh (supra)* 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 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 *Narinder Singh’s* case. The accused No.2 Roshan Kunder appears to be instrumental for the alleged unauthorised transfer of the amounts.

In view of the settlement, the Respondent No.2 is not going to support the prosecution case as against the Petitioners and therefore, possibility of their conviction is remote and bleak. Considering these facts and circumstances, in our view, the application deserves to be allowed. The Criminal Application is thus allowed in terms of prayer clause (a) & (b) , which read thus:

“(a) That this Hon’ble Court by its writ, order or direction of appropriate nature be pleased to quash and set aside the F.I.R. No.108/2021 and Chargesheet (CC No.2777/PW/2022) registered with Borivali Police Station, Mumbai, punishable u/s 379, 420 of IPC and 66 (D) of Information technology Act 2000 as against petitioners;

(b) That this Hon’ble Court after quashing the aforesaid FIR no. 108 of 2021, be pleased to direct concerned police station to defreeze the seized bank account of Petitioner No.2.”

9. The Petitioners will pay amount of Rs.10,000/- (Rupees Ten Thousand) each to the Police Welfare Fund viz. “*Mumbai Police Welfare Fund Account No.465010100008693*” within six weeks from today and this order is conditional upon payment of costs.

10. Writ Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)