

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION No. 727 OF 2021**

**VAISHALI
ANIL
TIKAM**

Manish Ramgopal Agarwal

....Applicant

Vs.

Dilip Chandrakant Mehta And Anr.

....Respondents

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by VAISHALI
ANIL TIKAM
Date:
2022.03.24
16:07:15 +0530

Mr. Ashok Kumar Mishra a/w. Viral Bhanushali a/w. Adhuri Amare-
Machado i/b. Solicis Lex for Applicant
Ms. M.H. Mhatre, APP for State

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 23rd MARCH, 2022.

P.C. :

1. It seems that though the learned counsel was appearing for Respondent No.1, subsequently, the counsel failed to attend the dates. Learned counsel appearing for the Applicant further submits he received an intimation via email from Respondent No.1 firstly, on 2nd March, 2022, expressing his inability to appear in the matter before this Court on account of ill-health of 90 year old mother of Respondent No.1. It seems that again in response to the subsequent communication, Respondent No.1 forwarded email on 7th March, 2022 and informed that due to ill-health of his 90 year old mother, he is unable to attend the matter listed before this Court. It is stated in the email that he wish to submit his No Objection for quashing the above said FIR by this Court on the listing date of the matter.

2. Learned counsel appearing for the Applicant further submitted that even the counsel appearing for Respondent No.1 was informed about listing of the matter but he has expressed his inability to attend the matter.

3. Considering all these aspects and considering the fact that the parties have settled the dispute by consent terms under a document 'Memorandum of Understanding' and Respondent No.2 submitted his expressed consent for No Objection for quashing of the FIR through communication forwarded to the firm of the Applicant's counsel, the Criminal Application is taken up for hearing disposal.

4. Our attention is invited to the statement of the Complainant placed on record at page 20. Learned counsel also placed on record a copy of the order dated 8th September, 2021 passed by the Learned Single Judge of this Court in Anticipatory Bail Application No. 2019 of 2021 filed on behalf of the Applicant. We are taken to Paragraph 2 of the said order which reads thus:

2. The grievance of the complainant was that he had booked a tour at Japan on 2nd November, 2019, with Neem Holidays Private Limited and paid Rs.4,23,400/-, in four installments. The complainant and others addressed letter to the applicant stating that due to outbreak of pandemic Covid-19, they wish to cancel the tour and requested him to refund the amount.

It was submitted before this Court on behalf of the Applicant, on instructions that the Applicant [Petitioner herein] would refund the amount of Rs.4,23,000/- to the complainant and his wife after deducting Visa charges. Then it was submitted that the applicant and the complainant jointly submitted that the dispute between both the parties have been resolved. and the applicant has paid the amount to the complainant by way of Demand Draft. The Memorandum of Understanding is taken on record. The MOU also placed on record along with petition at Exhibit 'C' page 36. The mode of payment of the amount is referred to in paragraph 7 in a tabular form and it is stated that an amount of Rs.5,00,000/- is paid to Respondent No.1 - Dilip Chandrakant Mehta as well as his wife - Meera Dilip Mehta by way of Demand Draft. The necessary details of the amounts and the Demand Draft numbers etc. are stated in the tabular form i.e. Table -I at page 40 of the petition.

5. Learned counsel appearing for the petitioner also invited our attention to paragraph 6 of the order passed by the Learned Single Judge, which reads thus:

6. *Learned APP submitted that the oral directions of this Court to ascertain the grievance of the other persons, if nay, were complied and their statements were recorded. They have been given the credit note*

and they would travel in future".

6. Considering all these aspects as well as considering the fact that Respondent No.1, who himself is a senior citizen i.e the age of 68 years, who is unable to come to this Court physically and submitted his expressed consent for No Objection for quashing the FIR and the fact that Respondent No.1 received the entire amount plus some additional amount against the booking charges for his travel, in our opinion, the continuity of proceedings arising out of Crime No. 55/2001 registered at Vanrai Police Station, Mumbai for the offences punishable under Sections 406, 420 of the Indian Penal Code would be nothing but futile exercise. Learned counsel for the Petitioner makes out a case for allowing the application.

7. Hence, Criminal Application No. 727 of 2021 is allowed in terms of prayer clause (c) and disposed of accordingly.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)