

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

CRIMINAL WRIT PETITION NO. 1732 OF 2021

1. Mr. Rehmatullah Abdul Kadar Gubitra.
2. Mr. Zariwala Abdul Hamid Usman.
3. Mr. Faizan Rehamatulla Gubitra. ...Petitioners.

Versus

1. State of Maharashtra.
2. Bhavesh Shantilal Sheth. ...Respondents.

***WITH
CRIMINAL WRIT PETITION NO. 4747 OF 2021***

1. Hasmukh Kuvarji Shah.
2. Mahesh Babulal Solanki.
3. Harsh Mahesh Solanki.
4. Jitendra Mahipal Jain.
5. Rajesh Mithalal Punamiya.
6. Girish Multanmal Sonigra.
7. Dinesh Girish Sonigra.
8. Jayantilal Ramji Gala.
9. Dhiraj Ramji Gala.
10. Vivek Dhiraj Gala. ...Petitioners.

Versus

1. State of Maharashtra
2. Bhavesh Shantilal Sheth. ...Respondents.

Mr. Kiran Verma a/w. Ms. Sakshi Mane i/b. Rajeev Sawant & Assoc.,
advocate for Petitioners in WP 1732/2021.

Mr. Kartik S. Garg, advocate for Petitioners in WP 4747/2021.

Mr. J.P. Yagnik A.P.P for the Respondent – State in both the Petitions.

Mr. Pranav Badheka a/w. Ms. Sneha Patil i/b. Maniar Srivastava & Assoc.,
advocate for respondent No. 2, in both the petitions.

Mr. P.D. Karekar, P.I. EOW in both the petitions.

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

DATE : 29th NOVEMBER, 2022

P.C. :

1. 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 A.P.P waives notice on behalf of the respondent No.1–State in both the Petitions. Learned Counsel Mr. Badheka waives notice on behalf of the respondent No.2.

3 By the aforesaid petitions, the petitioners seek quashing and setting aside of the FIR bearing C.R. No. 21 of 2020, registered with the Malad Police Station, Mumbai(subsequently, transferred to EOW Housing

Unit-II, Mumbai), for the alleged offences punishable under Sections 409, 420, 465, 467, 468, 471, 120-B r/w. 34 of the Indian Penal Code. Quashing is sought on the premise that, the parties amicably have settled their dispute.

4. Perused the papers. The Petitioners in Writ Petition No. 1732 of 2021 are the trustees of the Bai Rehmatbai w/o. Haji Zakeria Haji Ahmed Patel Waqf Trust No. II and the Petitioners in Writ Petition No. 4747 of 2021 are the tenants of the said trust. According to the Respondent No. 2 Bhavesh Sheth, he is the director of Fiza Builders Private Limited. He has alleged that the dispute pertains to the development project, in respect of the trust property, situated at CTS No. 149, S.V. Road, Malad, Mumbai. The respondent No. 2 has further alleged that the said trust had entered into a development agreement with his company in 2006, however, later, he learnt that some fresh construction was going on in the open space in the said property. He has stated that on enquiry, he learnt that the Petitioners i.e. tenants had entered into separate agreement with the Trust for temporary alternate accommodation, for which purpose, that construction was going on. Since the interest of the respondent No. 2 was severely

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prejudiced because of the said agreement entered into by the tenants with the trustees of the Trust, the respondent No. 2 lodged the aforesaid FIR as against the Petitioners alleging the aforesaid offences.

5. After investigation, the police filed “C” summary report before the appropriate court. Learned APP states on instructions that the police in their investigation did not find any substance with respect to allegations of forgery or any other offence, as alleged by the Respondent No. 2.

6. In the meantime, during the pendency of the aforesaid petition, the parties amicably settled their disputes and entered into Consent Terms. The said Consent Terms were filed before this court on the Original Side, in its Commercial Division, in Commercial Suit no. 177 of 2021 filed by the respondent No. 2, as against the trustees and the tenants of the said Trust. The said consent terms filed in the Commercial Suit are at Exh. C at page 38 of the Writ Petition No. 4747 of 2021. In view of the said Consent Terms, this Court(Coram: N.J. Jamadar,J), vide Order dated 6th April, 2022 disposed of the said suit between the complainant i.e. Respondent No. 2 and the defendant Nos. 6 to 17, 19, 20 in terms of the Consent Terms i.e. Talwalkar

between the Petitioners in the aforesaid petitions and the respondent No. 2. The suit was, however, to proceed against defendant Nos. 18 and 21 in the said Suit.

7. Learned Counsel for the Respondent No.2 has tendered an affidavit of the respondent No.2 in both the aforesaid Petitions. The said affidavits dated 28th November, 2022 have been duly notarized by the notary. The said affidavits are taken on record in both the aforesaid writ petitions. In the said affidavits, the respondent No. 2 has stated that he has no grievance, as against the Petitioners, and as such, has no objection to quashing the proceeding, against the Petitioners, registered vide C.R. No. 21 of 2020, initially with the Malad Police Station(subsequently, transferred to EOW, Housing Unit II, Mumbai). Accordingly, the respondent No. 2 has given no objection for quashing of the C.R., initiated at his behest, against the petitioners in both the Petitions.

8. The Respondent No. 2 is present in person. He reiterates, what is stated by him in his affidavit i.e. he has no objection for quashing the FIR registered at his behest, as against the Petitioners in both the petitions. The
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Respondent No. 2 has been identified by his counsel. Aadhar card of the respondent No. 2, duly attested by him is annexed to the affidavit filed by him. Learned APP has verified the original aadhar card.

9. Considering the nature of allegations, the amicable settlement between the parties, the affidavits of the respondent No. 2, both the Petitions are allowed and the FIR bearing C.R. No. 21 of 2020 registered with the Malad Police Station(subsequently transferred to EOW Housing Unit II, Mumbai) is quashed and set aside.

10. Rule is made absolute in the aforesaid terms. Petitions are disposed of accordingly.

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

R.N. LADDHA, J.

REVATI MOHITE DERE, J.