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

WRIT PETITION NO. 5828 OF 2021

Kalyan Dhakane & Ors. ...Petitioners
Versus
The State of Maharashtra & Anr. ...Respondents

- Mr. Rizwan Merchant i/b Rizwan Merchant & Asso., for the Petitioners.
- Mr. Akshay Bafna and Azeem Shaikh i/b Bafna Law Asso., for Respondent No.2.
- Ms. S.D. Shinde, APP, for the Respondent – State.

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

DATE : MAY 05, 2022.

PER COURT :

1. We have heard learned Advocate for the petitioners – accused, learned APP for Respondent – State and learned Advocate for Respondent No.2 – first informant. This is the petition for quashing of the report by consent of both the parties. The first information report bearing Crime No. 22 of 2021 registered at Chinchwad police station, on 31st January, 2021 for offences punishable under sections 380, 387, 389, 409, 420, 457, 467, 468, 471, 504, 506 and 120(B) of Indian Penal Code, 1860, on the complaint of one Madanlal Kankriya who is Respondent No.2. Whereas the

petitioners are the Directors of Effco Finishes and Technologies Pvt. Ltd. There was a financial transaction in between the said company and the first informant – Respondent No.2. Respondent No.2 has agreed to invest money in the said company whereas the petitioners have also agreed to invest certain amount in the company. The first informant fulfilled his promises whereas the petitioners have not fulfilled the same. But there is a further allegation that the petitioners by showing their relatives and other persons as employees of the said company have transferred amount to them under the heading of salary, but in fact they have never worked. As such, the allegations is that the petitioners have diverted the funds of the company and accordingly they have misappropriated the amount.

2. On this background the FIR came to be lodged. The petitioners could not succeed before the District Court while obtaining Anticipatory Bail. They have approached learned Single Judge of this Court. During the pendency of this proceeding, settlement was arrived at between the parties and the deed of settlement was

executed on 22nd March, 2021. So also, by another agreement titled as 'Irrevocable Management and Consultancy Services' to the company, the consideration is fixed. The petitioners have agreed to pay Rs. 60,05,000/- and Rs. 82,41,666/- and as per the two agreements the total comes to Rs. 1,43,03,118/-. The Respondent No.2 has also filed an additional affidavit thereby describing the amount coming to his share and to the shares of Rajendra Kankaria, Bhavrilal Kankaria and Anup Kankaria. The details are given in the table at paragraph no. 4. The details of total payment, amount already paid and amount to be paid by issuing post-dated cheques is also given. There is an outstanding amount of Rs. 74,06,666/-. For that the petitioners have already issued post-dated cheques in favour of three Kankaria persons mentioned in the affidavit. In view of the above the Respondent No.2 has given consent for quashing the FIR.

3. The prayer for quashing FIR is opposed by learned APP for the reason that, during investigation, statement of witnesses are recorded. The background of the dispute is advancing the money and it's

misappropriation. As parties have settled that dispute, the total outstanding has been agreed upon and some of the payment is made and post-dated cheques are also issued, we are inclined to quash the proceedings. By keeping the proceedings pending, no purpose would be served. It is important to note that in spite of this FIR, & in view of the settlement, Respondent No.2 has agreed to provide consultancy services to the company. So pendency of the FIR will come in their smooth functioning of the business. We are inclined to impose certain costs on the petitioners as well as on Respondent No. 2 to be paid to Jail Administration for the purpose of purchase of books. We quantify it to Rs. 50,000/-. In view of the above following order is passed.

ORDER

A. Writ Petition is allowed.

B. First information report (FIR) bearing Crime No.22 of 2021 registered at Chinchwad police station, on 31st January, 2021 for offences punishable under sections 380, 387, 389, 409, 420, 457, 467, 468, 471, 504, 506 and 120(B) of Indian Penal Code is quashed and set aside subject to following

conditions:

(i) The Petitioner Nos.1 to 3 shall pay an amount of Rs. 50,000/- and Respondent No.2 to pay Rs. 50,000/- by demand draft in favour of "Inspector General of Prison, Maharashtra State" with directions to utilize Rs. 50,000/- for the purpose of purchase of necessary books for the prisoners at Arthur Road Jail and Rs. 50,000/- for the same reasons for Taloja Jail.

(ii) The amount to be paid within three weeks from today and thereafter place on record the original receipts on the file.

(iii) In case of failure to pay amount, the prosecution will be revive.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)