

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

***CRIMINAL APPLICATION NO. 912 OF 2022***

Ketan Vinodrai Vakharia

...Applicant

Versus

1. The State of Maharashtra

2. Rajendra Dalpatlal Chodhry

...Respondents

Mr. Prasad Sadanand Panchal a/w Mr. Jigar Agarwal and Ms. Neha Rane for the Applicant

Ms. S. D. Shinde, A.P.P for the Respondent No.1-State

Mr. R. N. Bhagatjee for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &**

**S. M. MODAK, JJ.**

**FRIDAY, 30<sup>th</sup> SEPTEMBER 2022**

**P.C :**

1           At the outset, learned counsel for the applicant seeks leave to amend to delete paragraph 2 from the application. Leave granted. Amendment to be carried out forthwith.

2            Heard learned counsel for the parties.

3            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. Mr. Bhagatjee waives notice on behalf of the respondent No.2.

4            By this application preferred under Section 482 of the Criminal Procedure Code, the applicant seeks quashing of the FIR arising out of C.R. No. 239 of 2020 with the D.B. Marg Police Station, Mumbai, for the alleged offences punishable under Sections 420, 406, 409 of the Indian Penal Code. Quashing is sought on the premise that the applicant and the respondent No. 2 have amicably settled their dispute.

5            Perused the papers. According to the respondent No. 2 (original complainant), in 2012, he decided to invest in share market.

He has stated that as he was acquainted with the applicant, he asked the applicant in which shares to invest, as the applicant was a broker. It appears that the applicant advised him to open an account in J.M. Financial Services Ltd. It appears that during the period 18<sup>th</sup> November 2013 to 5<sup>th</sup> September 2014, the respondent No. 2, alongwith his family, purchased shares at the behest of the respondent No. 2, and that the shares were deposited in the respondent No. 2's Demat account. It appears that the applicant advised the respondent No. 2 to purchase shares, however, at the time of the sale of the said shares, the respondent No. 2 received only shares worth Rs. 5,15,000/-, when he had paid much higher amount. He has stated that he did not receive balance shares worth Rs. 2,00,000/-. He submits that the price of the shares was about Rs. 24,00,000/-. Considering the aforesaid, the respondent No. 2 lodged the aforesaid FIR registered vide C.R No. 239 of 2020, alleging the aforesaid offences i.e. cheating by the applicant to the tune of Rs. 1,03,77,300/-.

6           It appears that after investigation, charge-sheet has been filed and the case being C. C. No. 132/PW/2021 is presently pending before the learned Metropolitan Magistrate, 18<sup>th</sup> Court, Girgaum, Mumbai. It appears that civil suit was also filed by the respondent No. 2. In the said Civil Suit filed on the original side i.e. Suit (Lodging) No. 12079/2021, the applicant and the respondent No. 2 file consent terms. The said consent terms filed in this Court in the said Suit are at Exhibit `B' page 37. As per the consent terms, the respondent No. 2 has received Rs. 70,00,000/-.

7           In view of the consent terms and having received the said amount, the respondent No. 2 has stated that he will give his no objection for quashing of the aforesaid C.R. Learned counsel for the respondent No. 2 has filed an affidavit of the respondent No. 2 dated 29<sup>th</sup> September 2022, duly affirmed before the Notary. In the said affidavit, the respondent No. 2 has given his no objection to quashing of the aforesaid C.R, on receiving the said amount i.e. Rs. 70,00,000/-.

8           The respondent No. 2 is present in Court. Learned counsel has tendered a self attested xerox copy of the Aadhar Card of the respondent No. 2. The same is taken on record. The respondent No.2 is identified by his counsel. Learned A.P.P has verified the original Aadhar Card of the respondent No.2. On being questioned, the respondent No.2 reiterates what is stated in the affidavit and states that he has received Rs. 70,00,000/- from the applicant. He states that he has no objection if the C.R/proceeding i.e. C.C. No. 132/PW/2021 as against the applicant, are quashed.

9           Considering the nature of dispute, the amicable settlement arrived at between the parties and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*<sup>1</sup> and *Narinder Singh & Ors. vs. State of Punjab & Anr.*<sup>2</sup>, there is no impediment in allowing the application.

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1   (2012) 10 SCC 303

2   (2014) 6 SCC 466

10           The application is accordingly allowed. The FIR bearing C.R. No. 239/2020 registered with the D. B. Marg Police Station, Mumbai, as against the applicant and consequently the proceedings arising therefrom being C.C. No. 132/PW/2021 pending before the learned Metropolitan Magistrate, 18<sup>th</sup> Court, Girgaum, Mumbai, are quashed and set-aside.

11           The applicant to deposit a sum of Rs.25,000/-, with the **Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465**, towards cost. The said cost to be deposited within three weeks from today.

12           Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

13           It is made clear that the aforesaid order is passed, subject to the applicant depositing the said amount with the Mumbai Police Welfare Fund.

14 Stand over to 18<sup>th</sup> November 2022, for recording compliance of the payment of cost.

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.