

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

CRIMINAL APPLICATION NO. 1260 OF 2019

1. Mr. Rahul Jindal
s/o Mr. Surinder Jindal
Age – 37 Years, Occupation: Business,
Residing at House no; E/40, Sector-51,
Noida – 201 301, Uttar Pradesh ... Applicant

Versus

1. State of Maharashtra,
(through Rabale MIDC P.S., Thane)

2. Pradeep Venkatrao Mahajan
Age: 63 years, Occupation: Doctor,
Residing at Flat No.2502,
Signia Oceans, Plot No. 7, Sector – 10,
Airoli, Navi Mumbai – 400708. ... Respondents

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Mr Chandrani Prasad a/w Mr. Ashok Mishra, Jinesh Sanhavi and
Hrishikesh Naik i/by Ms. Solicis Lex for the Applicant.

Mr S. S. Hulke, APP for the State.

Mr Ashish Sharma a/w T. Monis i/by ALJ Partners for Respondent
No.2.

PSI Nivrutti Shinde, Rabale MIDC Police Station.

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

DATE : 2 DECEMBER 2022.

Order (Per R.N.Laddha,J.)

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable immediately, at the request of and with the consent of the learned Counsel for the parties.

3. This is an Application for quashing FIR No.I-143 of 2019 dated 16th May 2019 registered at the Rabale MIDC Police Station, Navi Mumbai, for the offences punishable under Sections 406, 420, 506 read with Section 34 of the Indian Penal Code qua the Applicant. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. It is the case of the prosecution that the Applicant is a businessman and director of M/s. Loom Crafts Shed Systems Pvt. Ltd. has an office in Ghaziabad, Uttar Pradesh. Respondent No.2 is the first informant/complainant and director of M/s. StemRX Bioscience Solutions Pvt. Ltd., Navi Mumbai. Respondent No.2 is a doctor by profession and has owned a hospital, namely Doctor Mahajan Hospital, New Mumbai, for the last 30 years. Respondent No.2 states that he demolished the existing building of his hospital for redevelopment. Mr Deepak Dongre was appointed as Project Management Consultant, and on his

suggestion, the work of building redevelopment was given to the Applicant. They agreed that the construction work would be completed within 210 days, and the valuation of the constructions would amount to Rs.3,75,00,000/- to be paid in instalments. Accordingly, they entered into MOU dated 17th April 2018, and an advance amount of Rs.2,00,000/- was paid to the Applicant.

5. It is alleged that though the money was paid in August 2018, the work did not commence till mid-September 2018. After that, Respondent No.2 decided to add two additional floors to the project and hence, MOU dated 4th August 2018 was executed for that purpose. The total construction was about 29380.82 square feet, and the consideration was about Rs.5,39,12,887/-. It is alleged that the Applicant employed local subcontractors, labours, JCB, etc. however, their due were not cleared for two-three months.

6. After that, Respondent No.2 further decided to amend the plans, and the project was now of ground plus seven floors and was about 41565 square feet, and the amount was about Rs.7,62,71,775/-. This fact was executed on plain paper on 14th January 2019. It is alleged that the Applicant used low-quality material while casting the ground floor slab and columns, and hence, he requested the Applicant to check the quality of the same. The Applicant, however, refused and vide email dated 26th

February 2019, demanded Rs.1,44,00,000/-. Respondent No.2 alleges that he paid Rs.50,00,000/- to Applicant on 27th February 2019.

7. It is alleged that although Respondent No.2 had paid Rs.3,50,00,000/-, the work of Rs.1,50,00,000/- only has been carried out. It is alleged that without giving any notice, the Applicant has stopped work since February 2019. It is alleged that the Applicant cheated Respondent No.2 to the tune of Rs.2,00,00,000/-.

8. Mr Chandrani Prasad, learned counsel appearing on behalf of the Applicant and Mr Ashish Sharma, learned counsel appearing on behalf of Respondent No.2, in unison, submitted that the parties have amicably settled the dispute.

9. They tendered an affidavit cum undertaking dated 2nd December 2022 of the Applicant and Respondent No.2, duly affirmed before the Notary. It is submitted that Respondent No.2 has no objection to quashing the impugned FIR qua the Applicant in light of the MOU executed between them. A copy of the MOU dated 10th November 2022, duly affirmed before the Notary, is placed on record. Respondent No.2 has also filed his consent affidavit dated 10th November 2022, duly affirmed before the Notary.

10. Applicant, as well as Respondent No.2, are present before the Court. They assured us they would abide by the terms and conditions in the MOU dated 10th November 2022. The Applicant and Respondent No.2 have tendered their joint affidavit, wherein they undertake that after the quashing of the impugned FIR, if any third party raises and proves any legitimate claim in respect of the impugned FIR, the Applicant and Respondent No.2 will satisfy their claim.

11. It is submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. The learned counsel for the parties submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Gian Singh Vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. Vs. State of Punjab & Anr.*²

12. Learned APP for Respondent No.1 submits that appropriate orders may be passed.

13. It reveals from the record that Respondent No.2 has filed the consent affidavit duly affirmed before the Notary and an Aadhar Card duly attested by him. Respondent No.2 is present before the Court and stated that he has no objection if the

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

impugned FIR against the Applicant is quashed in view of the settlement between the parties. On questioning, he reiterated what was said by him in the affidavit. Respondent No.2 has been identified by his counsel. Learned APP has verified the original Aadhar Card of Respondent No.2.

14. We have examined the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the case of ***Gian Singh and Narinder Singh (supra)***. Based on the material on record, it is apparent that the dispute between the parties has a predominantly civil flavour. Since the parties have amicably settled their dispute, the possibility of conviction is remote and bleak. Further continuation of the proceedings would be tantamount to the abuse of the process of law. Since Respondent No.2/First Informant will not support the allegations made by him in the impugned FIR, nothing fruitful will come out of the prosecution. We are informed that the charge sheet is not yet filed.

15. Considering these facts and circumstances, we see no difficulty in quashing the impugned FIR *qua* the Applicant. Accordingly, the Application is allowed in terms of prayer clause (c), which reads thus;

“(c) That this Hon'ble Court be pleased to quash C.R. bearing FIR No. I-143 of 2019 dated 16.05.2019 registered with MIDC Rabale Police Station, U/s. 406, 420, 506 r/w. 34 of Indian Penal Code, 1860 qua the Applicant.”

16. Learned Counsel for Respondent No.2 to file his *Vakalatnama*, if not filed, within two weeks of the uploading of this order.

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

(R.N.LADDHA,J.)

(REVATI MOHITE DERE)

BIPIN
DHARMENDER
PRITHIANI

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