

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

CRIMINAL WRIT PETITION NO. 5092 OF 2021

1. Shalini Singh, age of 27,
105, Pinewood Raheja Willows,
Akurli Road, Kandivali-east,
Mumbai, Maharashtra- 400101

.... PETITIONER NO.1.

2. Dinesh Singh, Age of 33
105, Pinewood Raheja Willows,
Akurli Road, Kandivali-east,
Mumbai, Maharashtra- 400101

.... PETITIONER NO.2.

// **VERSUS** //

1. The State of Maharashtra,
Through the Inspector of Police,
Andheri Police Station, Mumbai.

.... RESPONDENT NO.1

2. Jerome D'souza,
Villa Paradise Resort,
Gorai Beach, Gorai Road,
Malad (W), Mumbai.

.... RESPONDENT NO.2.

Shri Nikhil Mendge, Advocate for Petitioners.
Shri K.V.Sathe, A.P.P. for Respondent No.1 /State.
Shri Anil G. Lalla i/b Lalla & Lalla for Respondent No.2.

CORAM : PRASANNA B. VARALE AND
 ANIL S. KILOR, JJ.

DATED : FEBRUARY 10, 2022

P.C.

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. By the present petition under Article 226 of the Constitution of India and under Section 482 of Code of Criminal Procedure, the applicants are seeking to quash First Information Report dated 04/03/2021 registered vide Crime No. 168 of 2021 for the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code.
4. Respondent No.2 is first informant who had lodged report with Police Station Andheri, Mumbai against the petitioners alleging therein that during the period from 2016 to 2019 the petitioners in furtherance of their common intention to cheat the first informant had given false promise of performing marriage and by inducing the first informant, the petitioners had withdrawn Rs.1,00,00,000/- from the bank account of the first informant. Thereupon, the offence was registered against the petitioner vide FIR/Cr. No.168 of 2021, which is sought to be quashed and set aside by the present petition.

5. We have heard the learned counsel for the respective parties.

6. The learned counsel for the petitioners submits that after lodging of the complaint the parties have settled the dispute amicably and in view of the settlement the complainant does not want to pursue his criminal complaint.

7. The learned counsel for the petitioners has drawn attention of this Court to the Consent Terms signed by both the parties i.e. petitioners and the respondent No.2. In the said Consent Terms, the petitioners have agreed to refund an amount of Rs.1,00,00,000/- to the respondent No.2 and accordingly the amount has been deposited with the Registry of this Court. On deposit of the said amount, the respondent No.2 has given no objection for quashing of the FIR.

8. The learned counsel for the petitioners further pointed out that initially an amount of Rs.14,00,000/- was deposited with the Registry of this Court and subsequently Rs.86,43,437.99ps. as such, the total amount of Rs.1,00,43,437.99ps was deposited, whereas the amount as per agreement needs to be paid to the respondent No.2 is Rs.1,00,00,000/-. In that view of the matter, he prays for withdrawal of the remaining amount of Rs.43,437.99ps.

9. The learned counsel for the respondent No.2 is not disputing the fact of settlement and signing of the Consent Terms by the respondent No.2.

10. In the aforesaid backdrop, we have gone through the contents of the FIR. It is revealed that the dispute involved in the present case is a commercial dispute and no public element of law is involved. Moreover, as the petitioners have already deposited an amount of Rs.1,00,43,437.99ps in this Court, as per the Consent Terms, according to us, no purpose would be served even if the trial is permitted to continue.

11. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of *Madan Mohan Abbot vs. State of Punjab*, reported in **(2008) 4 SCC 582**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts, which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of the petitioners in the instant case will amount to abuse of the process of Court and therefore, it is in the fitness of things to quash the FIR and proceedings in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

12. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of *Narinder Singh vs. State of Punjab* **2014 AIR SCW 2065**, we are of the considered view that there is no impediment in quashing the criminal proceedings in question.

13. In that view of the matter, the writ petition needs to be allowed. As the police machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle Petitioners and Respondent No.2 with costs. Hence, I pass the following order:

- i) The writ petition is allowed subject to payment of costs of Rs.1,00,000/- each by the petitioners and the respondent No.2, which shall be paid to Dean, PBCF KEM Hospital, in two equal monthly installments, and the parties shall place on record the receipts of the deposit.
- ii) The Registry is directed to allow the respondent No.2 to withdraw Rs.1,00,00,000/- from the amount deposited in this Court by the petitioners.
- iii) The Registry is further directed to permit the petitioners to withdraw the balance amount of Rs.43,437.99ps.

- iv) For the quashment to take effect, Petitioner Nos.1 and 2 and Respondent No.2 shall pay the said costs and produce receipt thereof on the file of this Court within a period of eight weeks from today, failing which the petition shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as non-est. Registry will then intimate the concerned Police Station that subject FIR shall not be treated to have been quashed and that police shall proceed against the Petitioners in accordance with law.

The writ petition stands **disposed of** in the above terms.

(ANIL S. KILOR, J)

(PRASANNA B. VARALE, J.)

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