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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.75 OF 2022

1. M/s Sanatan Financers & Real Estates Pvt. Ltd.,
A Company registered under the Indian
Companies Act,
Through its Director, Ms. Mithu Sonar,
40 years of age,
C/o. Shop No. 14, 172/1, Peace Valley,
Duemol, Sirvoi, Quepem, Goa.

2. Mr. Ankit Kumar,
S/o. Sunil Kumar,
C.E.O. of M/s. Sanatan Financers &
Real Estates Pvt. Ltd.,
R/o. Flat no. 501/502, Block IV,
Kurtarkar Landmark Building,
Gogol, Margao – Goa.

3. Mr. Sunil Kumar,
S/o Anand Kumar,
R/o. House no. 107, Peace Valley,
Duemol, Sirvoi, Quepem, Goa.

... Petitioners.

Versus

1. Officer-in-charge,
Police Inspector,
Economic Offences Cell,
Panaji-Goa.

2. State
Through Complainants
Police Inspector,
Economic Offences Cell,
Panaji-Goa.

3. Mr. Dimitry Suprunyuk
Director of M/s Celsia Holiday Homes Pvt. Ltd.
H.no. 42, Apt. 59, 60 let Oktyabrya,
Street, Nizhnevartovsk,
Tyumen Region, 628600,
Russia Federation.

... Respondents.

Mr. A.D. Bhobe, Advocate for the Petitioners.

**Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondent State.**

CORAM:	M.S. SONAK, J & BHARAT P. DESHPANDE, J.
RESERVED ON:	13 February, 2023
PRONOUNCED ON:	15 February, 2023

JUDGMENT: (Per Bharat P. Deshpande, J.)

Rule. Rule returnable forthwith. Heard finally at the admission stage with consent of the parties.

2. Petitioner is a registered company under the Companies Act, carrying on business of real estate development. The Petitioner is praying for quashing of FIR No.5/2020 dated 21.08.2020 registered with Respondent No.1 at its Economic Offences Cell, Panaji on the ground that complaint on which such FIR is registered, is basically a civil dispute and registering FIR is abuse of process of law.

3. Heard learned Counsel Mr. A.D. Bhobe appearing for the Petitioner and Mr. P. Faldessai, learned Additional Public Prosecutor, for the State.

4. With the assistance of the learned Counsel appearing for the parties, we have perused the relevant documents and more specifically the contentions raised in the petition.

5. On the earlier occasion, we requested Mr. P. Faldessai to inform about the status of the investigation since FIR was registered initially in the year 2017 by Quepem Police, which was taken over by Respondent No.1 Economic Offences Cell in the year 2020. Mr. Faldessai candidly accepted that there is absolutely no progress in the investigation as the Complainant/Respondent No.3 is a Russian National and since he left India and did not pursue the matter inspite of repeated requests.

6. In view of these peculiar circumstances, we considered to decide the matter at the admission stage.

7. Mr. Bhobe appearing for the Petitioner strongly contended that the Petitioner is a real estate developer. While conducting such business, Petitioner purchased property at Sirvoi Village of Quepem Taluka somewhere in the year 2002. The said property was then developed in the year 2006 under the name and style of "Peace Valley". Petitioner constructed flats/apartments and villas and accordingly entered into various transactions for sale of such flats/apartments/villas with various purchasers. Some of the agreements for sale were also executed with Indian companies wherein some foreigners are Directors.

8. Mr. Bhobe then would submit that somewhere in August, 2013, Respondent No.3 along with one lady (Foreigner) filed a complaint against the Petitioner in Quepem Police Station. The Sub-Divisional

Police Officer conducted inquiry in such complaint and then reported to the Superintendent of Police, Margao concluding that such complaint speaks only about breach of agreement which is purely civil in nature. The report also suggests that the remedy is only for the breach of the agreement which is purely civil in nature.

9. Mr. Bhobe then would submit that somewhere in September, 2013, one Mr. Valentine Veselov, a Foreign National filed similar complaint against the Petitioner before the Superintendent of Police, South Goa, Margao. On inquiry by the P.I., Quepem, it was also found that the dispute is civil in nature. Somewhere in April, 2016, one Ms. Elena Matvienka (Foreign National) filed another complaint making similar allegations. That complaint was also inquired by P.I. Of Quepem Police Station concluding that the dispute is civil in nature.

10. Mr. Bhobe then would submit that on 19.09.2017, FIR vide crime No.86/2017 was registered at Quepem Police Station against the Petitioner for the offences punishable under Section 420 r/w 34 IPC on the basis of complaint filed by Respondent No.3. Similarly, on 09.11.2017, FIR No.96/2017 was registered against Petitioners No.2 and 3 under Section 420 r/w 34 IPC by Quepem Police on the basis of similar complaint filed by Mr. Valentine Vaselov. On 23.03.2018, FIR vide Crime No.13/2018 was registered against Petitioners No.2 and 3 under Section 420, 504 r/w 34 IPC by Quepem Police on similar complaint filed by Ms. Laima Drizniute.

11. Mr. Bhobe then would submit that upon investigation by Quepem Police, A-Summary report was filed before the learned Magistrate at

Quepem bearing Final Report No.26/2018, Final Report No.27/2018 and Final Report No.28/2018. On 15.03.2019, the learned Magistrate granted A-Summary in Final Report No.26/2018. On 16.10.2019, the learned Magistrate granted A-Summary in Final Report No.28/2018. However, on 23.08.2019, the P.I., Quepem, withdrew Final Report No.27/2018 on the ground of further investigation. Only on 02.01.2020, Respondent No.2 registered Enforcement Case Information Report (ECIR) bearing No. ECIR/PJZO/1/2020 for the purpose of investigation under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) against the Petitioners. On 22.08.2020, Petitioner No.2 came across a local daily newspaper report stating that FIR No.5/2020 under Section 420, 120-B of IPC stands registered against the Petitioners. However, no copy of report (ECIR) was furnished to the Petitioners. He would, therefore, submit that all the complaints filed by the said Foreign Nationals are in fact relating to the civil disputes and arising out of the agreement for purchase of flats/apartments/villas in the property which was developed by the Petitioners. The ingredients of cheating or conspiracy as tried to be projected are not at all made out.

12. Mr. Bhobe then would submit that this Court in Criminal Writ Petition No. 32/2022 filed by Petitioners No.2 and 3 challenging FIR No. 86/2017 registered against them at Quepem Police Station at the behest of Respondent No.3, was allowed vide order dated 28.11.2022. According to Mr. Bhobe, the same principles would apply to the matter in hand.

13. It has been submitted by Mr. Bhobe that since the time of filing of such First Information Reports at the behest of the said foreigners, there

is absolutely no progress in the matter as said foreigners left India and not cooperating with the investigating agency. The Investigating Officers failed to secure presence of the Complainants or to collect any material, and thus, keeping the sword hanging on the head of the Petitioners for indefinite period would not serve any purpose. Even otherwise, according to Mr. Bhobe, the dispute is clearly and purely civil in nature and no ingredients of cheating or conspiracy are made out.

14. Mr. Faldessai appearing for the State though tried to justify, candidly accepted that since the Complainant left India and not cooperating with the investigating agency even though tried to contact them, there is absolutely no progress in the matter. However, he submitted that Economic Offences Cell registered the offence only on the ground that provisions of PMLA Act stands attracted since there were transactions between the Complainant and the Accused company and there is need to conduct thorough investigation.

15. The rival contentions fall for consideration.

16. The only aspect which needs consideration is whether the Petitioners made out a case so as to exercise jurisdiction of this Court under Section 482 of Cr.P.C. so as to prevent abuse of process of law.

17. The complaint dated 21.08.2020 was lodged by P.I. Rajendra S. Prabhudessai of Economic Offences Cell wherein he disclosed that while investigating cases registered at Quepem Police Station and transferred to Economic Offences Cell bearing Quepem Police Station Crime No.86/2017, Quepem Police Station Crime No. 13/2018, Quepem Police

Station Crime No.96/2017, he sought information from various authorities which revealed that Petitioners No.2 and 3 along with their family formed 21 more companies with intention to cheat Foreign Nationals under the garb of selling flats/villas in the property namely “Peace Valley”. The modus operandi of the Accused persons is to receive money through Foreign Direct Investment (FDI) in companies for sale of flats/villas and thereby cheated Foreign Nationals to the tune of ₹5,40,00,000/- and odd by not transferring property in their name despite the receipt of money from them.

18. In Criminal Writ Petition No.32/2022 filed by present Petitioners No.2 and 3, we have already quashed FIR No.86/2017 registered at Quepem Police Station on the ground that dispute is purely civil in nature. Thus, the reference to FIR No.86/2017 in the complaint filed by P.I., Economic Offences Cell is of no help in coming to the conclusion or even believing that any offence under IPC or other Penal Acts was committed by Petitioners No.2 and 3.

19. As far as the other two FIRs registered at Quepem Police Station vide Crime No.13/2018 and Crime No.96/2017 are concerned, record reveals that upon inquiry, A-Summary Final Reports were submitted before concerned Magistrates. Such inquiry conducted by Quepem Police further shows that recommendation for A-Summary was made and accordingly, Final Report No.26/2018 and Final Report No.28/2018 were granted by concerned Magistrates. These orders of the learned Magistrates show that the said FIRs were closed by granting A-Summary.

20. Final report No.27/2018 was withdrawn by Quepem Police for further investigation. Only on the basis of this FIR, the Economic Offences Cell registered further FIR No.5/2020 under Sections 420 and 120-B of IPC. Apart from the question of registering second FIR on the same alleged facts in the earlier FIR No.86/2017 of Quepem Police Station, the original complaint filed by Respondent No.3 dated 06.09.2017 would clearly go to show that allegations made therein are in connection with a civil dispute. Agreement for sale was executed and thereafter dispute/differences arose between the parties. There are allegations in para No.11 of the complaint dated 06.09.2017 which reads thus:-

“11) Apartment, which we booked in B block from Russia we did not like – quality of construction was not good. Therefore, Natalia Korolenko offered another variant in C block flat No CS-D-13, which was more expensive. At that moment C block was under construction and Sunil Kumar had assured that C block would be much better than B block, because construction is going on under control of 'Best Western'. We knew that 'Best Western' is international system of hotels and of course, we believed to all words of Sunil Kumar and Natalia Korolenko, because everywhere – on gate, office and reception of Peace Valley project were borders (boards) of the said famous international brand.”

21. The other allegations are with regard to making Complainant and others signing some documents by which the Complainant and others became Directors in one of the Companies. Though there are money transactions, a perusal of the contents of such complaint would clearly reveal that dispute/differences between the Complainant and the Petitioners/Accused were purely civil in nature.

22. That apart, the investigating agency even did not file any reply affidavit in the present matter to justify the delay in investigating the matter or to controvert the contentions in the petition. Original FIR was registered at Quepem Police Station in the year 2017 and report was submitted before the learned Magistrate for grant of A-Summary, which means that no case is made out for filing of the charge-sheet. No doubt, said Final Report was withdrawn and later on, investigation was taken over by Respondent No.1 in the year 2020 who surprisingly again registered separate FIR No.5/2020. Though such FIR was registered, there is absolutely no progress till date in the same matter. The reason disclosed is that Complainant being a Foreign National is not cooperating or is not living in India. Such cannot be the reason for keeping the sword on the head of the Petitioners by claiming that the investigation is going on. No material has been placed before this Court to show what investigation has been carried out till date by Respondent No.1.

23. Reports of Superintendent of Police/SDPO in the earlier proceedings show that the dispute/differences between the said parties are purely civil in nature. In such circumstances, the observations of the Apex Court in the case of *M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*¹, and more specifically in para 10 would stand attracted. Such observations read thus:-

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

¹ AIR 2021 SC 1918

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
- ii) Courts would not thwart any investigation into the cognizable offences;*
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C. ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court; xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

24. The case of the Petitioners would squarely fall in the category at Sr. No. III, X and XV of the guidelines laid down by the Apex Court as above.

25. First of all, the allegations in the complaint clearly disclose a dispute which is civil in nature. By registering FIR, the Complainant and the investigating authority tried to give it colour of criminal offence. Secondly, though such FIR was registered in the year 2017, there is absolutely no progress in the investigation till date either by the concerned Police Station or by the Economic Offences Cell so as to consider the ingredients of Sections 420, 120-B of IPC against the Petitioners. The investigation cannot be continued indefinitely and more particularly when the Complainant who is a Foreign National is not at all interested in helping the investigating machinery. Apart from that, the Investigating Officer did not produce any material before this Court to consider whether investigation in this matter is required to unearth any conspiracy as tried to be projected in the complaint.

26. In Criminal Writ Petition No. 32/2022 filed by Petitioners No.2 and 3, we have already quashed and set aside FIR No.86/2017 registered at Quepem Police Station on the ground that continuance of such FIR is clearly an abuse of process of law.

27. Having said so, continuance of the present FIR No.5/2020 would also be an abuse of process of law and no purpose would be served since till date no material has been collected by the investigating agency to justify their action. The contention of the investigating agency that the

Complainant is not cooperating, is not a ground to delay further investigation.

28. Vide order dated 28.09.2022 in Cr.M.A. No.38/2022, Applicant was directed to deposit ₹50,00,000/- as security for his return from abroad. The Applicant deposited ₹50,00,000/- in the Registry on 01.11.2022. Mr. Bhobe submitted that though Applicant was granted liberty to visit U.K. and deposited such security amount with this Court, Applicant for his personal reasons did not visit U.K. and remained in India. He, therefore, prayed that the amount deposited by the Applicant be returned to him. Since we are inclined to allow the petition by quashing the impugned FIR and since the Petitioner did not avail the facility to go abroad but deposited the amount with this Court, he is entitled to refund of the amount deposited with this Registry. We, therefore, direct the Registry to refund the amount deposited by the Petitioner with this Court on 01.11.2022 i.e. ₹50,00,000/- by way of security.

29. In the result, we clearly observe that the proceedings if allowed to be continued in such a manner, would be clearly an abuse of process of law. Secondly, the dispute is clearly civil in nature and hence, we are inclined to grant the relief as claimed in prayer clause (a) of the present petition.

30. For the reasons stated above, the Rule is made absolute in terms of prayer clause (a). FIR No.5/2020 dated 21.08.2020 is hereby quashed

and set aside. The Registry shall return amount of ₹50,00,000/- deposited by the Petitioner as security. There shall be no order as to cost.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.