

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.528 OF 2023**

1. Nikunj Rajesh Jasani	]	
2. Manish Vinodchandra Shah	]	
3. Bharat Chandulal Bhanushali	]	Petitioners

Vs.

1. The State of Maharashtra	]	
2. Vishal Usha Kejriwal	]	Respondents

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Mr. Jash Vyas a/w Mr. Punit Vyas, for Petitioners.

Ms. S.S. Kaushik, A.P.P, for Respondent No.1-State.

Mr. Rajesh Singh a/w Mr. Karan Mehta and Mr. Harshad Joshi, for Respondent No.2.

Mr. Bangar, P.I. EOW, Unit 3.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 16th February, 2023.

ORDER: [Per Prithviraj K. Chavan, J.]

1. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal.

4. Learned A.P.P waives notice on behalf of respondent No.1-State and Mr. Singh, learned Counsel waives notice on behalf of respondent No.2 (Original Complainant).

5. By this petition under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the petitioners seek quashing of the First Information Report (for short "F.I.R") registered vide C.R. No.321 of 2018 with Azad Maidan Police Station, Mumbai, for the alleged offences punishable under sections 420, 465, 467, 468, 471 r/w 120-B of the Indian Penal Code (for short "I.P.C") and subsequently investigated by EOW, Unit - III, Mumbai under C.R. No.120 of 2018.

6. Briefly stated, facts are as follows.

7. Respondent No.2 is the original complainant. His grand parents viz. Babulal Mahadeo Kejriwal and Ratnidevi Babulal

Kejriwal were issueless. Therefore, they had adopted Vinodkumar i.e father of the respondent No.2 by Adoption Deed dated 20th April, 1971. Vinodkumar was the son of Omprakash Changoiwala. Omprakash Changoiwala had three sons. Vinodkumar was the second biological son of Omprakash Changoiwala and Mrs. Shashidevi. Omprakash Changoiwala is the real brother of Ratnidevi Babulal Kejriwal.

8. On 24th May, 1983 Vinodkumar was married to Usha Kejriwal (nee Usha Bedia). Respondent No.2 was born on 8th May, 1984. Respondent No.2 is the only child of Vinodkumar and Usha Kejriwal. Babulal Mahadeo Kejriwal expired on 3rd September, 1973 while Ratanidevi Babulal Kejriwal died on 4th April, 2007. By the end of the year 2015, on the basis of the documents obtained by filing revocation application, the respondent No.2 came to know about the offences committed by the petitioners. There are several properties involved in the litigation as stated in paragraph 4(e) of the petition. Parents of the respondent No.2 separated on 4th December, 2007. Till the death of his father on 4th April, 2007, respondent No.2 was residing at "*Ratan Niwas*". It is alleged that since 1985 till 2006, respondent No.2 and his mother were forced

to stay at the house of his maternal grandmother Late Smt. Geetadevi R. Bedia. After separation of his parents, respondent No.2 was not on visiting terms with his father. He was not informed about death of his father by Changoiwala family though the respondent No.2 was the only son who had a right to perform his father's last rites. It is alleged that Changoiwalas' purposefully did not intimate the respondent No.2 and his mother about demise of his father.

9. Subsequently, the respondent No.2 came to know about the probate petition of Will of his grandmother Ratnidevi filed in this Court. Respondent No.2, therefore, obtained details of the testamentary petition and suspected that Changoiwalas' have misappropriated properties of his father and grand parents. Thereafter, the respondent No.2 obtained documents from the concerned Government Departments and came to know that the said Changoiwala and others, for their own economic benefits, conspired and cheated even the concerned Government Departments by preparing false documents such as Development agreement dated 21st April, 2015 in respect of "*Ratan Niwas*", sale deed dated 18th February, 2013 in respect of property situate at

Tungarli, Maval, Pune, illegal documents in respect of petrol pumps, lacunae in Will dated 10th December, 2004 of Ratanidevi Babulal Kejariwal, alleged Will dated 28th August, 1972 of Babulal Mahadeo Kejariwal, alleged Will dated 20th November, 1985 of Vinodkumar Babulal Kejariwal. Accused No.2 - Arun Changoiwala had filed Testamentary Petition No.196 of 2009 for probating the purported concocted, false Will of deceased Ratanidevi Kejriwal. Accused No.2 - Arun Changoiwala had obtained Probate dated 24th December, 2010 by playing fraud and illegality in order to dishonestly grab the movable and immovable property of the father, grandfather and grandmother of the respondent No.2 in collusion and connivance with each other. It is alleged that accused No.1 and 2 had suppressed the true and material facts from this Court and even misled this Court. It is alleged that accused had, therefore, played fraud upon this Court as well as upon the respondent No.2. He, therefore, filed Revocation Petition. Accused Nos. 4 to 6, witnesses of the purported Will dated 14th March, 2001 of deceased Ratanidevi are close relatives and childhood friends of accused No.2-Arun Changoiwala. The respondent No.2, *inter alia*, lodged a complaint against the petitioners and others, pursuant to which, C.R. No.321 of 2018 dated 25th December, 2018 came to

be registered against the petitioners for the offences punishable under sections 420, 465, 467, 468, 471 r/w 120-B of the I.P.C at Azad Maidan Police Station and subsequently the matter was investigated by EOW, Unit - III, Mumbai under C.R. No.120 of 2018.

10. It is submitted by the learned Counsel for the respective parties that the petitioners and the respondent No.2 have settled their dispute and entered into the consent terms dated 6th October, 2022, copy of which is annexed at 'Exhibit B'. In view of the said consent terms, this Court disposed of Miscellaneous Petition No.49 of 2016 as well as Suit No.582 of 2016 vide order dated 6th October, 2022, copy of which is annexed at 'Exhibit C'. Paragraphs No.10, 23 and 33 of the consent terms filed in Suit No.582 of 2016 are relevant for the purpose of quashing of the F.I.R, which read thus;

"10. The Defendant No.1 hereby agrees that in addition to the aforesaid three flats along with three car parkings, as referred in Clause No.5 hereinabove, the Defendant No.1 shall pay Rs.10,00,000/- to the Plaintiff in the following manner i.e 1) Rs.5,00,000/- by D.D. No.090815 dated 26/09/2022 drawn on Bank of India, Mahim Branch, Mumbai on the date

of signing of this Consent Terms and 2) Rs.5,00,000 by D.D on the day of quashing of the F.I.R/C.R. No.120 of 2018 registered with the Economic Offence Wing, Mumbai against the Defendants and other Accused. Further, the cost of quashing of the F.I.R/C.R registered with Economic Offences Wing, Mumbai against the Defendants and other Accused shall be solely borne by Defendant Nos. 1 and 3 alone. However, for the quashing of the aforesaid F.I.R/C.R., the Parties concerned shall individually bear the legal expenses for their respective Lawyers.

"23. The Plaintiff undertakes to aid and assist the Defendant Nos. 1 to 4 and other accused in quashing of FIR/C.R No.120/2018 pending with the Economic Offence Wing, Mumbai or any other authority. However, the Defendant Nos. 1 to 4 undertakes to file the appropriate proceeding before the competent court of law for quashing of the aforesaid FIR/C.R, within 30 days from the date of filing of this Consent Terms. Further, the cost of quashing of the aforesaid FIR/C.R. registered with Economic offences wing shall be solely borne by Defendant Nos. 1 and 3 alone. However, for the quashing of the aforesaid FIR/C.R, the Parties concerned shall individually bear the legal expenses for their respective Lawyers".

33. The parties to the present Consent Terms hereby withdraw all the allegations made against each other as well as pending litigation and arbitration proceedings, unconditionally.

And further in view of this Settlement, the Plaintiff and Defendants shall not raise claim and/or damages against each other. However, in the event of breach/violation of the terms and conditions of this Consent Terms, the parties are at liberty to exhaust their legal remedy, in accordance with law".

11. Learned Counsel for the respondent No.2 has tendered consent affidavit of the respondent No.2 dated 13th February, 2023 duly notarized before the Notary. A photostat copy of the Aadhar Card of the respondent No.2 duly attested by him is annexed with the said affidavit. The same are taken on record. In the said consent affidavit, the respondent No.2 has stated that he has given his consent for quashing of the aforesaid F.I.R, in view of the consent terms, arrived at between him and the petitioners. He has further stated that he has given consent out of his free will and volition without any undue influence and/or coercion.

12. Respondent No.2 is present in the Court. On being questioned, he reiterates what is stated by him in his affidavit. Learned Counsel appearing for the respondent No.2 has identified him. Learned A.P.P has verified his original Aadhar Card.

13. Considering nature of the dispute, amicable settlement between the parties in view of the consent terms arrived at between the parties, consent affidavit of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in the cases of **Gian Singh Vs. State of Punjab and another¹** and **Narinder Singh and others Vs. State of Punjab and another²**, there is no impediment in allowing the petition.

14. The petition is accordingly allowed. First Information Report registered vide C.R. No.321 of 2018 with Azad Maidan Police Station, Mumbai and subsequently investigated by EOW, Unit - III, Mumbai under C.R. No.120 of 2018, against the petitioners, is quashed and set aside.

15. The petitioners to deposit costs of Rs.1,00,000/ each with **"Jeevan Sandhya Mangalya Sansthan"**. Bank details of which are as under:

Name of Account	Jeevan Sandhya Mangalya Sansthan
Account Number	60134381699
Type of Account	Saving
Name of Bank	Bank of Maharashtra

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

Branch	Padgha
IFSC Code	MAHB0000189
PAN NUMBER	AAATJ2015Q

The said costs to be deposited within four weeks from today.

16. Rule is made absolute in the aforesaid terms subject to the petitioners depositing costs, as stated above. Petition is disposed of accordingly.

17. Matter be listed for recording compliance regarding deposit of costs, on **23rd March, 2023**.

18. All concerned to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]