

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

CRIMINAL WRIT PETITION NO.2550 OF 2021

- | | | |
|----|--------------------------------|----------------|
| 1. | Manish Kumar Gautam Chand Jain | |
| 2. | Dinesh Kumar Gautam Chand Jain | |
| 3. | Bhupendra Gautam Chand Jain | ...Petitioners |
| | Versus | |
| 1. | The State of Maharashtra | |
| 2. | Mahesh Mithalal Tripathi | |
| 3. | Brijesh Pramodkumar Shah | ...Respondents |

Mr. Bhavesh Thakur, for the Petitioners.

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

Mr. Mukund Pandya, for the Respondent Nos.2 and 3.

PSI - Vatsala Dighe, L. T. Marg Police Station, Mumbai, is present.

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

DATE : 2nd JANUARY 2023

P.C. :

1. Heard learned counsel for the parties.
2. 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. Pandya waives notice on behalf of the respondent Nos.2 and 3.

3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the FIR bearing C.R. No.576 of 2020, registered with the L. T. Marg Police Station, Mumbai, for the alleged offences punishable under Sections 409, 420 r/w 34 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. From a perusal of the FIR lodged at the instance of the respondent No.2, an authorized representative of Kashvi Bullion, a proprietary concern, it appears that there was a business transaction between the petitioners and Kashvi Bullion and Priyansh Gold. It appears that despite Kashvi Bullion and Priyansh Gold having transferred an amount of Rs.1,04,44,200/- in favour of the petitioners' company/proprietary concern, the petitioners failed to

deliver the gold as promised. Pursuant thereto, the respondent No.2, an authorized representative of Kashvi Bullion, a proprietary concern lodged the aforesaid FIR as against the petitioners, alleging the aforesaid offences. After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, being C.C. No.703/PW/2022.

5. During the pendency of the aforesaid case, the parties amicably settled their dispute, inasmuch as, the petitioners proprietary concern Nakoda Gold & Jewelry settled their dispute with Priyansh Gold and Kashvi Bullion. It appears that pursuant to the settlement, the petitioners delivered gold to the said proprietary concern i.e. Priyansh Gold and Kashvi Bullion.

6. Both, the respondent No.2 – Mahesh Mithalal Tripathi, an authorized representative of Kashvi Bullion as well as respondent No.3 - Brijesh Pramodkumar Shah, a proprietor of Priyansh Gold

have filed their respective affidavits giving their no objection to the quashing of the aforesaid FIR and consequently, the proceeding arising therefrom. Both, respondent No.2 - Mahesh Tripathi, an authorized representative of Kashvi Bullion as well as respondent No.3 - Brijesh Shah, a proprietor of Priyansh Gold have in their affidavits stated that they have received the gold from the petitioners on 15th September 2020 and as such have no grievance as against the petitioners and consequently no objection for quashing of the FIR/proceeding, as against the petitioners. Both, respondent No.2 – Mahesh Tripathi as well as respondent No.3 - Brijesh Shah, a proprietor of Priyansh Gold, are present in Court. On questioning, they both re-iterate what is stated by them in their affidavits. Learned counsel for the respondent Nos. 2 and 3 has tendered a self attested photocopy of the aadhar card of respondent No.3 - Brijesh Shah. As far as the aadhar card of respondent No.2 - Mahesh Tripathi is concerned, a self attested photocopy of the aadhar card of the said respondent has been already filed alongwith the affidavit of the said respondent. Learned Counsel for the

respondent Nos.2 and 3 has identified the respondent No.2 – Mahesh Tripathi as well as respondent No.3 - Brijesh Shah. The learned APP has also verified the original aadhar cards of the said persons.

7. Considering the nature of dispute, the amicably settlement between the parties, the affidavits of the respondent No.2 – Mahesh Tripathi and respondent No.3 - Brijesh Shah and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*², there is no impediment in allowing the petition.

8. The petition is accordingly allowed and the FIR bearing C.R. No.576 of 2020, registered with the L. T. Marg Police Station, Mumbai, and consequently, the proceeding pending before the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, being C.C. No.703/PW/2022, are quashed and set-aside.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

9. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

10. The petitioners Nos.1 and 2 to deposit a sum of Rs. 1,00,000/- each, with the **Jeevan Sandhya Mangalya Sansthan bearing Account No. 60134381699 IFSC No. MAHB0000189**, as costs. Similarly, the petitioner No.3 to deposit a sum of Rs. 1,00,000/-, with the **Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465**, as costs. The said costs to be deposited within three weeks from today.

11. Stand over to **6th February 2023**, for recording compliance of the said deposit of costs.

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.