

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.526 OF 2023**

1. Omprakash L. Changoiwala	]	
2. Arun Omprakash Changoiwala	]	
3. Mangesh Omprakash Changoiwala	]	
4. Mahesh S. Sawalka	]	
5. Navenet K. Agrawal	]	
6. Kanchan Lal Agrawal	]	
7. Neruvisseri Variath Appu Warriar	]	Petitioners

Vs.

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

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Ms. Swati Sagvekar, 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. Quashing is sought on the premise that the parties have amicably settled their dispute.

6. Briefly stated, facts are as follows.

7. Deceased Ratnadevi Babulal Kejriwal was the real sister of the petitioner No.1. She was issueless. Deceased Ratnadevi and her husband - deceased Babulal Kejriwal had, therefore, adopted Vinodkumar (deceased) who was the son of the petitioner No.1, during their lifetime vide an Adoption Deed dated 20th April, 1971. The said Adoption Deed has been duly registered with the Sub Registrar of Assurances Bombay on 30th June, 1971.

8. Babulal Mahadeo Kejriwal died on 3rd September, 1973 leaving behind a Will which was un-probated. His adopted son deceased Vinodkumar got married with one Usha Bedia on 24th May, 1983. From the said wedlock, the respondent No.2 was born on 8th May, 1984. Dispute and differences arose between Vinodkumar and Usha Bedia, which has ultimately resulted into filing a divorce proceeding before the Family Court, Bandra. Deceased Vinodkumar and Usha Bedia, thereafter, entered into the

consent terms, mutually, by which their marriage stood dissolved. An order to that effect came to be passed by the Family Court on 4th December, 1997. The marriage was dissolved in view of the consent terms. By virtue of the said consent terms, Usha Bedia was paid an amount of Rs.12,50,000/- towards full and final settlement and custody of the respondent No.2 was taken by Usha Bedia.

9. Deceased Ratnidevi Babulal Kejriwal died on 10th December, 2004 leaving behind her last Will and Testament dated 14th March, 2001. Petitioner No.2 is the executor and petitioner Nos. 4 and 5 are the signatories to the said Will. The petitioner Nos. 6 and 7 are the signatories of the Will of deceased Vinodkumar Kejriwal. Petitioner No.3 is not concerned with the Will at all.

10. Post death of the deceased Ratnidevi Kejriwal, deceased Vinodkumar used to keep unwell. Deceased Vinodkumar expired on 4th April, 2007. Since the whereabouts of the respondent No.2 and his mother were not known to the petitioners, a paper publication informing the people at large about the death of deceased Vinodkumar Kejriwal was given in the newspaper.

11. On 6th February, 2009, the petitioners filed Testamentary Petition bearing No.196 of 2009 for the grant of Probate of the last Will and Testament of Late Ratnidevi Kejriwal. However, due to inadvertence, the Advocate representing the petitioners did not mention about the respondent No.2 and his mother in the said petition and since the respondent No.2's mother and deceased Vinodkumar were divorced in the year 1997, their whereabouts were not known to the petitioner No.1 and 2.

12. At the time, when the adoption of deceased Vinodkumar Kejriwal had to be proved before this Court, Advocate of the petitioners were directed to add names of the respondent No.2 and his mother as next of kin. Pursuant to the amendment, a citation dated 3rd May, 2010 came to be issued by this Court and was affixed on the High Court's Notice Board and on the Collector's Notice Board on 7th May, 2010, *inter alia*, Prothonotary and Senior Master had also directed to publish the original citation in "Free Press Journal" (English Newspaper) and "*Hamara Mahanagar*" (Hindi Newspaper) on 22nd June, 2010 as the whereabouts of the respondent No.2 and his mother were not known to the petitioners.

13. A clerk of the Advocate appearing for the petitioners filed his Affidavit of Service on 9th July, 2010 proving service, which has been accepted by this Court and pursuant thereto, the said Testamentary Petition was allowed and Probate was granted on 24th December, 2010.

14. Subsequently, petitioner No.1, pursuant to the grant of Probate, agreed to sell the property purchased by deceased Ratnidevi Babulal Keriwal situate at Lonavala to M/s Infina Ashapura Homes LLP vide agreement of sale dated 5th December, 2012, pursuant thereto, a sale deed dated 27th January, 2013 was executed between the petitioner No.1 and M/s. Infina Ashapura Homes LLP.

15. Subsequently, the respondent No.2 filed a Miscellaneous Petition No.49 of 2016 for revocation of probate granted in favour of the petitioners. The respondent No.2 also filed a Suit bearing No.582 of 2016 for declaration and decree in respect of properties mentioned in the Will of Late Ratnidevi Babulal Kejriwal. 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.

16. 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'. Paragraph 23 of the consent terms filed in Suit No.582 of 2016 is relevant for the purpose of quashing of the F.I.R, which reads thus;

"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".

17. 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.

18. 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.

19. Considering nature of the dispute, amicable settlement 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.

20. 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.

21. The petitioners to deposit costs of Rs.1,00,000/ each with **"Anand Parivaar Charitable Trust, Satara"**. Bank details of which are as under:

Bank Name	Central Bank of India
Account Number	1919815017
IFSC CODE	CBIN0281516

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

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466

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

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

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]