

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.217 OF 2023**

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|----|--------------------------|---|-------------|
| 1. | Krishna Ganpat Gaikwad |] | |
| 2. | Sunita Vinod Gaikwaad |] | |
| 3. | Vinod Dharmraj Gaikawad |] | Applicants |
| | Vs. | | |
| 1. | The State of Maharashtra |] | |
| 2. | Sanjay Sattu Kamble |] | Respondents |

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Mr. Shailesh Kharat, for Applicants.

Mr. J.P. Yagnik, A.P.P, for Respondent No.1-State.

Mr. Nagesh Khedkar, for Respondent No.2.

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

DATE : 2nd March, 2023.

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

1. Heard.

2. Rule.

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

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

5. By this application under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the applicants seek quashing of the F.I.R registered vide C.R. No.266 of 2019 with Wadala Police Station, Mumbai, for the alleged offences punishable under sections 420, 467, 468, 471, 201 r/w 34 of the Indian Penal Code (for short "I.P.C") and consequently, the proceeding pending before the learned Metropolitan Magistrate, 29th Court, Bhoiwada, Mumbai being C.C. No.838/PW/2022. Quashing is sought on the premise that the parties have amicably settled their dispute.

6. Briefly stated, facts are as under.

7. Respondent No.2 had purchased Room No.64 situate at Kamlaram Nagar, Om Pipe Road, Barkat Ali Darga, Wadala (East), Mumbai from one Kamlabai Balu Londhe in 1994. Room was located in the slum area. Respondent No.2 has been residing in the said room ever since it was purchased by him. Subsequently, he had given temporary possession of the said room to his sister viz. Sunita Shankar Kamble in the year 2000. Sunita Kamble was financially weak and, therefore, for her survival, she had started a mess (Khanaval) in the said room. At the relevant time, applicant No.1, who was the customer of the said Mess started residing with Sunita Kamble in the said room.

8. Respondent No.2's sister Sunita Kamble relinquished her right, title and interest in respect of the said room in favour of the applicant No.1 for a consideration of Rs.15,000/-. Said Sunita has further stated that none of her family members including the respondent No.2 had any claim over the said room. Subsequently, in the month of July, 2003, Sunita Kamble repaid the entire amount of Rs.15,000/- to the applicant No.1. In turn, the applicant No.1 left the said room but again came back. Since the respondent No.2 had all the original documents

of title *qua* the said room and that he had also obtained a loan of Rs.39,000/- from ICICI Bank and, therefore, he had submitted the documents to the said Bank.

9. The respondent No.2 had been to his native place at Vadgaon, Taluka Hatkangale, District Kolhapur from 2008 to 2012 and when he returned in the year 2013, he came to know that the room was removed by a developer under Slum Rehabilitation Area (S.R.A) scheme. It is alleged that applicant No.1 sold the room to the applicant No.2 by forging certain documents. Applicant No.2 had submitted those forged documents to B.M.C, Collector and S.R.A Authorities as well as to the builder. As such, a report came to be lodged against the applicants, as above.

10. It is submitted that the parties have now amicably settled their dispute. It is agreed between the parties that the applicants will pay Rs.6,00,000/- to the respondent No.2 as and by way of full and final settlement. Learned Counsel for the respondent No.2 has tendered affidavit of the respondent No.2 dated 2nd March, 2023, duly affirmed before the Assistant Registrar, High

Court, Appellate Side, Bombay. A photostat copy of the Aadhar Card of the respondent No.2 duly attested by him is annexed with the said affidavit. The said affidavit is taken on record. For ease reference, paragraphs 3, 4 and 5 of the said affidavit are reproduced below;

"3. I say that due to the intervention of our mutual acquaintances the matter has been settled between us. I say that pursuant to which the consent terms are executed between me and the Applicants. I say that the matter has been settled for an amount of Rs.6,00,000/- (Six Lakhs Rupees only) as a full and final settlement amount and thereafter I will not have any claim over whatsoever nature of the property in dispute or I will not claim any monies from the Applicants in respect of the subject matter.

4. I say that I have received Rs.50,000/- (Fifty Thousand Only) in cash on 31.01.2023 and therefore executed the present affidavit. I say that I have agreed to receive remaining amount of Rs.5,50,000/- (Five Lakhs Fifty Thousand Only) after quashing of the present criminal proceedings. I say that the Applicants have agreed to hand over me the undated cheques of Rs.3,50,000/- (Three Lakhs Fifty Thousand Only) bearing no.000003 drawn at HDFC bank

issued by Vinod Dharmraj Gaikwad and Rs.2,00,000/- (Two Lakhs only) cheque no.014041 drawn at the State Bank of India issued by Sunita Vinod Gaikwad both in my favour on the date of quashing present of the present FIR. I say that the cheques will be deposited as soon as the FIR is quashed by putting the date on cheques after receipt of the order of quashing.

5. I say that the property in dispute is about Room No.201, Shreesai Ganesh CHS, Salt Pan Road, Kalaram Nagar, Wadala (East), Mumbai - 37. I say that the FIR was filed in respect of the said room. I had sold the said room to the Applicant No.1 to the Applicant No.2 and 3. I say that I will not have any claim or any right of whatsoever nature in the said property. I will not initiate any civil or criminal proceedings in respect of the said subject matter of the FIR".

11. Respondent No.2 is present in the Court. On being questioned, respondent No.2 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 the original Aadhar Card of respondent No.2.

12. Considering the nature of the dispute, amicable settlement between the parties, affidavit of respondent No.2 and having regard to the judicial pronouncements of the Apex Court in case of **Gian Singh Vs. State of Punjab and another**¹ and **Narinder Singh and others Vs. State of Punjab and another**², there is no impediment in allowing the application.

13. The application is accordingly allowed. The F.I.R bearing C.R. No.266 of 2019 registered with Wadala Police station as against the applicants and consequently, the proceeding pending before the learned Metropolitan Magistrate, 29th Court, Bhoiwada, Mumbai being C.C. No.838/PW/2022, are quashed and set aside subject to transfer of Rs.3,50,000/- in the respondent No.2's account through NEFT. Learned Counsel for the applicants, on instructions, states that the applicants will transfer Rs.3,50,000/- in respondent No.2's account, within two days. Statement accepted.

14. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

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

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]