

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1279 OF 2023

Mr. Sunil Nair

Adult, Indian inhabitant, Age:55 Years,

Having its place of residence at

Plot No.43, Sector-5, Next to Shakuntal Building,

Koparkhairane, Navi Mumbai – 400 709.

.. Petitioner

Vs.

1. The State of Maharashtra

Through Economic Offences Wing,

Unit II, Opposite RBI, Sector No.10,

CBD-Belapur, Navi Mumbai – 400 614.

2. M/s. Varunraj Realtors Private Limited

Through Director Ashish Mandhale,

Adult, Indian, Inhabitant having his address at

Madhuvats Farm, Behind Someshwar Mandir,

Awas, Alibag Raigad, Maharashtra,

India – 402 201.

.. Respondents

- Mr. Shirish Gupte, Sr.Adv. a/w. Mr. Ashwin Thool & Mr. Amey Mirajkar i/b. AZB & Partners, for the Petitioner.
- Mr. Aditya Mithe, for Respondent No.2.
- Mr. J.P. Yagnik, APP for State.
- Petitioner present in Court.
- Respondent No.2 present in Court.

CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, JJ.

DATE : 10th APRIL, 2023.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the stage of admission itself.

2. On the basis of complaint lodged by Mr. Manish Patil, the erstwhile Director of M/s. Varunraj Realtors Private Limited with Kharghar Police Station, Navi Mumbai, initially registered offence under Sections 420, 465, 467, 468, 471, 474 read with Section 34 of the Indian Penal Code, 1860 against the present petitioner. The allegation was that this petitioner cheated the company by an amount of Rs.80,50,00,000/- (Rupees Eighty Crores Fifty Lacs Only) by giving a false promise of selling property belonging to Mr. Mahadev Walekar and Mr. Harishchandra Walekar, who were later on added as Accused Nos.2 and 3 in the present crime and inducing the company into purchasing stamp paper for entering into settlement with Accused Nos.2 and 3 and later on the stamp paper was changed by the present petitioner and then using another stamp paper, the present petitioner sold the land belonging to Accused Nos.2 and 3 to a third party by name Smt. Anita Mody.

3. At this juncture, it is pointed out by the learned Senior Counsel for the petitioner that the name of third party has been mistakenly written

as Smt. Anita Mody in the FIR and actually her name is Smt. Anjali Mody. The Investigating Officer is personally present before this Court and he admits the mistake and submits that her name is Smt. Anjali Mody. However, the Investigating Officer has not taken any care to correct the mistake which has occurred in registering FIR. The Investigating Officer has however corrected the name filed while filing the charge-sheet. But he has not filed any affidavit to this petition. In such matter, it is necessary that the Investigating Officer files his reply.

4. Be that as it may. From the above referred allegations, it can be seen that the grievance of the company is basically against the present petitioner. The grievance is that this petitioner misused the trust reposed in him by the former Director of the company and substituting the stamp paper provided to him by the former Director of the company, purchased another stamp paper in his own name by making a representation that he was actually representing the company and then used that stamp paper for entering into a transaction of sale of the land belonging to Accused Nos.2 and 3 in favour of Smt. Anjali Mody.

5. During the entire investigation, it has been found that no particular role has been played by Accused Nos.2 and 3 in the present crime. Now, the company M/s. Varunraj Raltors Private Limited has decided to amicably settle the matter with the petitioner. The company

has also taken a decision to settle the dispute with Accused Nos.2 and 3. The company has decided to give its no objection for quashing all the crimes registered against the petitioner and Accused Nos.2 and 3 and accordingly have passed a resolution to this effect. A copy of the resolution is already filed on record. By this resolution, the company has authorised its another Director by name Mr. Ashish Mandhle to swear consent affidavit for the purpose of giving no objection from the company to quash all the crimes.

6. Accused Nos.2 and 3 are not present before the Court while the petitioner is personally present before the Court. He is duly identified by his learned counsel. The authorised Director of the complainant company Mr. Ashish Mandhle is also personally present before the Court. He is duly identified by his learned counsel. He states that now he does not wish to prosecute the petitioner and also Accused Nos.2 and 3 any more and he states so, as told to this Court by him, voluntarily. He also states that he would have no objection if the present crime and also the proceedings instituted upon the present crime are quashed and set aside not only against the present petitioner, but also Accused Nos.2 and 3 and if it is done, he would have no further objection. The petitioner also submits that there is an amicable settlement reached him with the complainant as a result of which nothing has remained in

the present crime.

7. Considering the fact that the main allegation is only against the present petitioner and also the fact that the dispute underlying the present crime is of civil nature involving no aspect of public policy whatsoever and the further fact that the complainant has voluntarily decided to withdraw all his allegations against the petitioner and also the remaining accused-persons, any further trial of the petitioner and other accused-persons would be an exercise in futility. Therefore, interest of justice demands that the settlement reached between the petitioner and the complainant is accepted by relying upon the consent affidavit filed on record by the complainant i.e. Respondent No.2.

8. In view of above, the petition is allowed in terms of prayer clause (ii) and (iv) which read as under:-

(ii) That this Hon'ble Court be pleased to quash and set aside the FIR bearing No.056 of 2017 registered with the Kharghar Police Station, Navi Mumbai u/s.420, 465, 467, 468, 471, 474 and 34 of the Indian Penal Code, 1860 against the Petitioner on such terms and conditions as this Hon'ble Court may deem fit and proper;

(iv) That this Hon'ble Court be pleased to quash and set aside RCC No.500194 of 2018 u/s.420, 465, 467, 468, 471, 474 and 34 of the Indian Penal Code, 1860 pending before the

Hon'ble Judicial Magistrate First Class, Panvel arising out of
FIR No.056 of 2017 on such terms and conditions as this
Hon'ble Court may deem fit and proper.

9. This is subject to condition precedent that the petitioner and Respondent No.2 shall deposit an amount of Rs.25,000/- each, within period of four weeks from today, in the account of Maharashtra State Legal Services Authority, failing which this Order will be cancelled automatically and the matter will be restored to file of this Court for further directions.

10. Let the Registrar (Judicial-I) to verify the compliance and close the matter if compliance is made.

11. Rule is made absolute in the above terms.

12. The petition is disposed of. No order as to costs.

13. Stand over 19th October, 2023 for reporting compliance.

[M.M. SATHAYE, J]

[SUNIL B. SHUKRE, J.]