

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

WRIT PETITION NO. 3721 OF 2018

Alpesh Arvindbhai Patel & Ors. ...Petitioners
Versus
The State of Maharashtra & Anr. ...Respondents

**ALONG WITH
CRIMINAL APPLICATION NO. 134 OF 2019
IN
WRIT PETITION NO. 3721 OF 2018**

The State of Maharashtra ...Applicant
Versus
Alpesh Arvindbhai Patel & Ors. ...Respondents

....

Mr. S. C. Wakankar for the Petitioner.

Ms. P. P. Shinde, APP for State/Respondent No.1.

Mr. Arshad Nehal a/w Mr. Anshuman Deshmukh, Original Complainant

Ms. Saima Ansari for Respondent No.2.

Mr. Kaviraj Patil, Police PSI, Hadpsar Police Station, Present.

**CORAM : G. S. KULKARNI, &
R. N. LADDHA, JJ.
DATE : March 17, 2023**

Oral Judgment (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure is filed praying that complaint against the petitioners registered vide C.R. No.621 of

2018 at the Hadapsar Police Station, District Pune, on 26 May 2018 by respondent No.2/complainant Shri. Babajan Rajmahammad Aalmelkar, be quashed and set aside. The complainant alleges that the petitioners have committed offences punishable under Sections 420, 406, 409 read with Section 34 of the Indian Penal Code.

2. The petitioners are partners of one Shubh Corporation which is stated to be engaged in the business of development of lands and construction activities. There were disputes between the parties arising in respect of a real estate development, subject matter of the first information report in question, namely Survey No.133, Hissa No. 4 A admeasuring 61 R situated at Mouje Hadapsar. The dispute was also subject matter of a civil suit filed by complainant against the owners of the land bearing Survey No.133, Hissa No.4 A i.e. Mr. Vasant B. Magar and Ors. before the Civil Judge, Senior Judge, Pune being Special Civil Suit No.1529 of 2005 which prayed for specific performance against the original owners which was decreed by a judgment and order dated 27 September, 2007. The said order was challenged by the defendants therein by filing a Miscellaneous Civil Application No. 677 of 2008 on which final orders came to be passed on 01 July, 2014 by the learned Civil Judge, Senior Division,

Pune. The decree passed in special civil suit No.1529 of 2005 is stated to have attained finality, in consequence thereto, a Deed of Confirmation cum Deed of Assignment came to be executed between the parties on 03 October 2012 and which was further subject matter of confirmation in supplementary agreement dated 23 April 2015.

3. There were also proceedings before the Maharashtra Real Estate Regulatory Authority being the proceeding of complaint No. C.C.005000000011508 filed by the complainant against one M/s. Darshan Developers and M/s. Shubh Corporation through its partner, namely petitioner herein. The proceedings of the said complaint came to be compromised between the parties in terms of Consent Terms dated 13 February, 2020 in which, it was agreed between the complainant as also Shubh Corporation (of which the petitioners are partners) that the disputes between the parties are being put to an end in the manner as set out in the said consent terms. Under such Consent Terms, the complainant has accepted 17 units as set out in paragraph 'b' of the Consent Terms leaving aside 10 units, the details of which are set out in paragraph 'b' of such Consent Terms. In such consent terms, the parties have *inter alia* agreed for the FIR in question to be quashed by consent and for a

further settlement in regard to area as set out in clauses (d) & (e) of the Consent Terms. Insofar as the present proceedings are concerned, as to what the parties have agreed in clauses (i) & (j) of the said consent terms needs to be noted, which is as follows :-

“(i) The complainant shall also give No Objection Certificate the Police Complaints (FIR) filed against all the Partners (existing as well as erstwhile) within 60 days of the signing of consent terms.

(j) The respondent has also filed Writ Petition before the Honourable High Court, Mumbai vide Criminal Writ Petition No. 3721 of 2018 for quashing of FIR/Police Complaints, the respondent shall withdraw the same within 60 days of withdrawal of the FIR by the complainant.”

4. Accordingly, the parties are before the Court today praying that by consent, the First Information Report in question be quashed and set aside qua the seven petitioners. On a perusal of the FIR, it is seen that there are two more accused other than the petitioners, namely Shri Hitesh Girish Bangari and Shri Jagdish Chinmbhai Patel who are not the petitioners and who are stated to have not approached the Court in any proceedings for similar reliefs.

5. Learned counsel for the petitioners has drawn the Court’s attention to the settlement as arrived between the parties before the Maharashtra Real Estate Regulatory Authority, as placed on record of the present proceedings on an affidavit dated 21 March 2022, in

which the complainant has stated that he has amicably settled the disputes with the petitioners and in view of the settlement, he has no complaint against the petitioners. He accordingly records his no objection for quashing of the FIR in question. He also states that he intends to continue the proceedings against the two accused who are not parties to the present proceedings whose names are recorded in the FIR and noted by us hereinabove.

6. Learned counsel for the complainant/Respondent No.2 has tendered an additional affidavit of the complainant dated 15 March 2023, wherein the complainant has reiterated his contentions and statements as made in the earlier affidavit dated 21 March 2022.

7. From the previous orders passed on this petition, we note that the parties were before the Court to submit that by consent the FIR in question be quashed and set aside and accepting such contentions of the parties, the proceedings were adjourned for orders to be passed to the said effect.

8. Mr. Wakankar learned counsel for the petitioners has submitted that the FIR needs to be quashed only against the

petitioners who are seven out of the nine accused as named in the FIR in question, which would amount to passing an order of quashing the FIR in question partially. It is his submission that such course of action is permissible relying on the decision of the Supreme Court in **Lovely Salhotra and Anr. Vs. State, NCT of Delhi**¹ wherein the Supreme Court in paragraph 4 observed thus :

“4. We have taken into account the fact of the matter in question as it appears to us that no cognizable offence is made out against the appellant-herein. The High court was wrong in holding that the F.I.R. cannot be quashed in part and it ought to have appreciated the fact that the appellants-herein cannot be allowed to suffer on the basis of the complaint filed by Respondent No.2- herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against co-accused Nos.2, 3, 4 and 6 prima facie.”

(emphasis supplied)

9. The decision of the Supreme Court in **Lovely Salhotra and Anr. Vs. State, NCT of Delhi** (supra) was followed by the Delhi High Court in the case of **Mrs. Poonam Khanna Vs. State & others**, the Court observing that a request for partial or part quashing of FIR only qua the accused/ offender with whom the complainant had compromised would be a valid course of action. Similar view has been taken in the case of **Sunil Tomar Vs. The State of NCT of Delhi & Anr.** in the proceedings of CRL. M.C. 1741 of 2021.

1 2017 SCC Online SC 636

10. We have accordingly heard learned counsel for the parties. We have also perused the consent terms as entered between parties before the Maharashtra Real Estate Regulatory Authority, Mumbai in the proceedings as noted by us above. It clearly appears that the dispute between the complainant/respondent No.2 and the petitioners stands settled and now in view of the settlement as noted by us, the complainant has no grievance against the petitioners. Thus considering the settled principles of law as laid down by the Supreme Court in the case of **Gian Singh vs. State Of Punjab & Anr.**² and in the case of **Narinder Singh & Ors vs State Of Punjab & Anr.**³, in our opinion, it is in the interest of justice that the FIR in question as consented by the complainant be quashed and set aside in so far as the petitioners are concerned.

11. We accordingly allow the petition in terms of prayer clause (a). The FIR No. No.621 of 2018 shall stand quashed and set aside only against the petitioners and in so far as the other two accused are concerned, the Investigating Officer is free to proceed to investigate the offences in the manner as the law mandates.

² (2012) 10 SCC 303

³ 2014 (6) SCC 466

12. As fairly agreed, the petitioners shall deposit Rs.50,000/- with the Maharashtra Centre Police Welfare Fund A/C No.914010029005759 (IFSC No. UTIB0000060. The said amount be deposited within a period of two weeks from today.

13. In view of the FIR being quashed against the petitioners, the Interim Application as filed by the State for permission to file charge sheet would not survive. The same stands disposed of.

[R. N. LADDHA, J.]

(G. S. KULKARNI, J.)