

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

CRIMINAL WRIT PETITION NO. 1538 OF 2023

1. Mrs. Shamim B. Modak of Bombay,
adult, Indian Inhabitant, aged about
60 years, Occ-Business R/at. Flat
No. 15/16, Shekhar apartment,
New Mill Rd, Kurla (w),
Mumbai-400 028.
2. Mr. Bhagwati Prasad Vishwakarma,
Aged about 56 yrs, Occ-Business,
R/at Room No. A/4-49, Bindeshwari
CHS Ltd., Nehru Nagar, 90ft Road,
Dharavi, Mumbai – 400 017. }Petitioners/Accused.

Versus

1. The State Of Maharashtra
(Through Kurla, Police Station.) }
2. Mr. Sachin Vimal Jain, Aged about
48 years, Occ-Business, R/at Flat No.
A/601, Saiba Palace, New Mill Road,
Kurla(E), Mumbai-400 070. }Respondents

Ms. Shirin Irani i/b Mr. Prajot H. Jaggi for the Petitioner.
Petitioner No. 1 Present in Court.

Mr. K.V. Saste, APP for the Respondent No.1/State.

Mr. Kamlesh D. Hadkar, for the Respondent No. 2

Respondent No. 2 present in Court.

**CORAM : SUNIL B. SHUKRE AND
M.M. SATHAYE, JJ.**

Date : 27th APRIL, 2023.

JUDGMENT (Per M.M.SATHAYE, J.):

1. Rule. Rule made returnable forthwith. Learned APP waives service for Respondent No. 1/State. Learned Counsel for Respondent No.2/complainant waives service. Taken up for final hearing with consent of parties.

2. By this petition filed under Article 226 of the Constitution of India read with section 482 of the Criminal Procedure Code, the Petitioners / accused are seeking to quash by consent, a crime registered under FIR No.178/2014 registered with Kurla Police Station Mumbai and consequent Criminal Case No. 1301/PW/2014 pending before 51st Metropolitan Magistrate Court at Kurla, Mumbai for offences punishable under Sections 420, 506(2) read with Section 34 of the Indian Penal Code.

3. Learned counsels for both the Petitioners and Respondent No. 2/ complainant jointly state that now the matter is amicably settled and Respondent No. 2 has filed consent affidavit. Learned APP for the State has not seriously opposed the settlement and quashing of crime in this petition.

4. Perusal of the FIR dt. 17.05.2014 shows that it is alleged by Respondent No. 2 that Petitioner No. 1 cheated him by suppressing that the flat she was agreeing to sell to him, was in fact mortgaged with a Bank and by still accepting large sum of money for that and denying to return said money when the transaction could not be completed. It is further alleged that when the Respondent No. 2 went to demand his money from Petitioner No. 1, Petitioner No. 2 who was staying with Petitioner No. 1, threatened Respondent No. 2 with dire consequences if he demanded his money back.

5. Perused the consent-affidavit now filed and affirmed by Respondent No. 2 on 28.03.2023. It is stated therein that he had filed Civil Suit No. 3337 of 2014 against the Petitioner No. 1 in City

Civil Court which has been decreed under consent terms dt. 07.02.2023 and the matter has been amicably settled thereunder. Copy of said consent terms & Order disposing off the suit are placed on record. It is further stated by Respondent No. 2 that since monetary dispute between the parties have been resolved, he does not wish to continue with his criminal proceedings and he has no objection if the impugned FIR filed by him and consequent criminal case is quashed.

6. Petitioner No. 1 & the Respondent No. 2 / complainant are present personally today in the Court and are identified by their respective advocates. On our inquiry, they stated that they have settled the matter voluntarily, without any pressure or coercion.

7. From the above facts and circumstances, it appears that the underlying dispute from which the alleged crime has arisen, is private and civil in nature arising out property sell transaction which could not be completed and partial consideration which was paid, was not returned on demand. The civil & monetary part of the dispute is now resolved under the decree of the Civil Court with

consent terms. As such, this Court is of the considered view that if the parties are settling amicably, no public policy will be offended if such settlement is allowed and the crime is quashed.

8. In the net result, we pass following order:

i) The petition is allowed in terms of prayer clause (a), which reads as under :-

“(a).That this Hon’ble Court be pleased to issue appropriate writ,order and direction directing the quashing of the Criminal Case. No.1301/PW/2014 pending before 51st Metropolitan Magistrate Court at Kurla, Mumbai arising out of FIR No.178of 2014 registered by the respondent no.1 at the instance of the respondent no.2 registered under the provision of Sections420, 506(II) r/w. 34 of Indian Penal Code on such terms as this Hon’ble Court may deem fit and proper.”

ii) This is subject to the condition that petitioner nos.1 and 2 together shall deposit an amount of Rs.10,000/- and respondent

no.2 shall also deposit an amount of Rs.10,000/-, within four weeks from today, in the account of Maharashtra State Legal Services Authority, Mumbai, failing which this order shall stand cancelled automatically and the matter shall be listed before this court for further directions.

iii) Registrar (Judicial-II) to verify compliance and close the matter, if compliance is made.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)