

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 392 OF 2023
WITH
INTERIM APPLICATION NO. 1514 OF 2023

Jharson Ruben Nadar }
aged 28 years }
Resident of 2/11, Pothan Pila Vilai, }
Azhakia, Mandapam Kalkulam, }
Kanyakumari, Mulagumoodu, Tamil }
Nadu-629167. } ...Applicant

V/s.

1. State of Maharashtra }
} }
2. Mr. Fardoon Meenu Irani }
C/o Authorised representative on }
behalf of M/s. Lucky Minerals Aged 59 }
years, residing at 19, Malcolm Baug, }
Jogeshwari (West), Mumbai-400102. }
} }
3. The Senior Inspector of Police }
Wadala T.T. Police Station, Mumbai in }
their C.R. No. 65 of 2022 } ...Respondents

Mr. Venkat Rao a/w. Mr. Akash Gaonkar with Ms. Archita Rao for
applicant.

Mrs. Taubon Irani a/w. Ms. Sushmita Sherigar with Ms. Disha Shetty
with Ms. Sachi Lodha for respondent no.2.

Ms. S.D. Shinde-APP for the State.

Respondent No. 2 present in Court.

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

DATED : MAY 02, 2023.

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

- . Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
3. The applicant is one of the accused in Crime No. 65/2022 registered at Police Station Wadala, Mumbai for the offences punishable under Sections 409 and 420 read with section 34 of Indian Penal Code. The remaining accused are Smt. Chandrakala Ruben Nadar and Sriniwasan. Out of them Smt. Chandrakala Ruben Nadar is admittedly dead and, therefore, all criminal proceedings against her would abate.
4. The gist of the allegations made against the applicant and other accused persons is that by making a false representation to the complainant i.e. respondent no.2 that they will procure certain machinery required by respondent no.2, by importing it from abroad, they induced the respondent no.2 to part with certain sums of money amounting to Rs. 57,76,000/- and later on, these accused persons criminally misappropriated that money and did not procure the

machinery.

5. It is also alleged that while the applicant and deceased Chandrakala Ruben Nadar- accused No.2 acted as Directors of M/s. Jharsanya Logistics Pvt. Ltd, Accused no. 3-Sriniwasan, was the General Manager and In-charge of accounts of the company at the relevant time.

6. On careful perusal of the F.I.R. lodged by respondent no.2 it is seen that the deal for the import of machinery was struck in the year 2007 when the deceased Ruben Nadar, the father of the applicant was in-charge of day-to-day affairs of the company as its Director. It is further seen that as a part of the deal, respondent no.2 was entrusted with the duty of obtaining import permission from Director General, Foreign Trade, Division New Delhi, but, respondent no.2 could not obtain the permission due to the restrictions imposed by the Government. It is further seen that respondent no.2, due to his inability to obtain import permission, had also sought extension of time for submission of the same to deceased Ruben Nadar, which appears to have been granted to him by the deceased. It is further seen that later on, the Directors of the company informed the respondent no.2 that they would use their good offices with the Foreign Trade

Division and would see to it that on payment of certain customs duty, the import of the machinery would become possible and accordingly, they requested the respondent no.2 to deposit the sums of money, as mentioned in the F.I.R., in the account of the company, which were later on deposited in the personal account of deceased Ruben Nadar at his request. It is further seen that the deceased Ruben Nadar, after having received the said money in his personal account, did not pay the customs duty and did not procure the machinery as promised by him for respondent no.2.

7. From the allegations so made in the F.I.R., it appears that the promises made were basically by the deceased Ruben Nadar whereby he agreed to procure machinery for respondent no.2, but did not fulfill those promises. Deceased Ruben Nadar is admittedly no more and in fact, no F.I.R has been registered against him; the F.I.R. has been registered against this applicant, his mother Chandrakala Ruben Nadar and General Manager of the company.

8. In the whole affair, it appears that the deceased Ruben Nadar was the principal accused but, now it is not possible to prosecute him.

9. Meanwhile, the applicant, in order to discharge the

obligation of deceased, has entered into settlement with respondent no.2 and as per this settlement, he has paid an amount of Rs. 50 lakhs, which was due from his father to the respondent no.2. As stated by learned counsel for the applicant, this has been done by the applicant as well as respondent no.2 by way of full and final settlement of the dispute that the respondent no.2 had with deceased father of the applicant.

10. Respondent no.2 and applicant both are personally present before this Court. They are duly identified by the learned counsel. We have enquired with them and it is agreed that consensus has been reached between them for full and final settlement of the entire dispute and it is voluntary in nature. In paragraph 3 of the settlement which is filed on record, it is mentioned that respondent no.2 would have no objection if this Court thinks it fit to quash the F.I.R bearing no. 65/2002. Learned counsel for the respondent no.2 also submits that the respondent no.2 would have no objection if the entire F.I.R. has been quashed and set aside.

11. In view of the above, we find that the settlement arrived at between the parties deserves to be accepted, especially when all the promises, which appear to be falsely made, were not *prima facie* made

by the present applicant or the remaining accused, but by deceased Ruben Nadar and the money involved in the whole dispute was also received by deceased Ruben Nadar in his personal account. Even though there are two other incidents in which two crimes have been registered against the applicant, as informed by learned APP, on instructions given vide report dated 19.04.2023 marked as document 'A' submitted by Investigating Officer, which are Crime Nos. 15/2022 and 43/2022 registered at Kanyakumari, we are inclined to accept the settlement between the applicant and the respondent no.2 in the present matter. The settlement between the informant and the applicant in this case is against the backdrop of facts, which really does not *prima facie*, show any involvement of the present applicant in the present crime. This background, insofar as his role is concerned, gives the present dispute a colour of civil dispute involving no issue about any public policy whatsoever. These are the reasons why we say that criminal antecedents of applicant, if any, would have no adverse impact on the settlement between the parties.

12. In the result, the petition deserves to be allowed and is allowed in terms of prayer clause 'b' which reads as under:-

'(b) That this Hon'ble Court be pleased to exercise its inherent jurisdiction under section 482 of the Code of

Criminal Procedure, 1973 and be pleased to quash the Impugned FIR bearing C.R. No. 65 of 2022 lodged with Wadala Truck Terminal Police Station, Mumbai in respect of the Applicant’.

13. This is subject to the condition that the applicant and the respondent no.2 shall pay and deposit an amount of Rs. 5000/-each in the account of Maharashtra State Legal Services Authority, Mumbai within a period of four weeks from the date of this order, failing which this order shall stand cancelled automatically and the matter shall be placed before this Court for further directions. Learned Registrar-Judicial (II) to verify compliance and close the matter if it is made.

14. Rule is made absolute in the above terms.

15. The Criminal Application as well as interim application is disposed of.

(M.M. SATHAYE, J)

(SUNIL B. SHUKRE , J)