

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

CRIMINAL WRIT PETITION NO. 1405 OF 2022

Vishwajeet Subhash Jhavar	...	Petitioner
Versus		
Pratik Pravin Bhandari & Ors.	...	Respondents

Mr. Amit Ashok Gharte for the Petitioner.
Mr. Anand Pai i/by Manan Sharma for the Respondent No.1.
Ms. M. H. Mhatre, APP for the Respondent No.2-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 28th JUNE, 2023

P.C. :-

1. Its an admitted position on record that out of contractual obligation the respondent no.1-complainant has initiated Special Civil Suit No. 604 of 2015 wherein prayer is for certain mandatory injunctions, specific performance, etc.

2. It is the case of the petitioner that the cancellation was by mutual consent and the third party interest is already created in flat in question which was agreed to be sold to the respondent no.1.

3. In the pending suit referred above, the petitioner has deposited an amount of Rs.76,00,000/- + Rs.42,00,000/- total Rs.1,18,00,000/- for which the accrued interest is informed to be more than Rs.50,00,000/-.

Note: This order is corrected as per speaking to minutes order dated 27th July 2023.

4. The counsel for the petitioner, on instructions from the petitioner, informs that the petitioner has no objection if the respondent no.1 is permitted to withdraw the amount with accrued interest till the date of withdrawal on such amount, subject to outcome of the aforesaid civil suit.

5. The aforesaid statement and submissions are made on instruction from the petitioner who is present in the Court.

6. The learned counsel for the respondent no.1 informs that he has no objection for the quashing as the respondent no.1 is in agreement with the aforesaid terms provided the respondent no.1 is permitted to pursue the pending suit against the petitioner.

7. The identity of respondent no.1 is duly established through the learned Advocate representing him so also the certified copy of Aadhar Card duly endorsed by the Advocate.

8. In view of aforesaid submissions, what can be noticed is the respondent no.1-complainant has extended his consent for quashing of the offence.

9. In view of stand taken by the respondent no.1, the fact remains that the prosecution initiated against the petitioner cannot be taken to its logical end by achieving the very object for initiation.

9(a). When the praecipe for speaking to minutes of this order was moved, it was stated that the amount deposited was Rs.1,18,57,867/-.

Note: This order is corrected as per speaking to minutes order dated 27th July 2023.

10. Apart from above, in the interest of justice particularly having regard to the fact that the petitioner and the respondent no.1 are litigating before the competent Civil Court, the quashing can be permitted. In support of the aforesaid observations, we can rely on the judgments of Apex Court in cases of *Gian Singh v/s. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. v/s. State of Punjab and Anr.*².

11. As such, the prayer for quashing stands allowed in view of the consent extended by respondent no.1. The FIR being No. 3012 of 2016 registered on 12th April, 2016 with Koregaon Police Station, Pune for an offence punishable under Sections 3, 4 and 13 of the MOFA Act, 1963 and the consequential charge-sheet filed against the petitioner is hereby quashed and set aside, subject to compliance of following conditions:

(a) The respondent no.1-complainant is permitted to withdraw the amount of Rs.1,18,57,867/- with accrued interest till the date of withdrawal, subject to final outcome of the pending suit between the petitioner and respondent no.1.

(b) The petitioner shall deposit of Rs.2,00,000/- with the High Court Legal Services Authority within period of four weeks from today. Similarly, the respondent no.1, in response to the Court's query, submits that an amount of Rs.50,000/- shall be deposited with Kirtikar Law Library, Mumbai, within period of four weeks from today.

(c) Both, the petitioner and respondent no.1 shall produce the copy of the receipt with the registry in complying with the order of payment referred above.

1 (2012) 10 SCC 303.

2 (2014) 6 SCC 466.

Note: This order is corrected as per speaking to minutes order dated 27th July 2023.

(d) In case, if the payment is made, office to proceed and close the matter as directed herein above. In case, if the amount of cost is not paid, let the matter be placed before this Court as the order permitting quashing of prosecution shall automatically stand revived.

12. Writ Petition is allowed in aforesaid terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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DHARMENDER PRITHIANI
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