

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

CRIMINAL APPLICATION NO. 336 OF 2011.

1. Aditya Vardhan Agarwal,
 2. Manish Goenka,
 3. Swapan Kumar Mandal
- .. Applicants.

Versus

1. State of Maharashtra,
 2. M/s. Shiv Jagannath Steel
Pvt. Ltd., through its Director
Sanjay Narendra Bansal
- .. Respondents.

Mr. Jayant Bardeskar for the applicants.

Mr. J.P. Yagnik, APP for the respondent No.1-State.

Mr. Sandeep K. Barve and Mr. Santosh Wagh i/by B.K. Barve and Co. for respondent No.2.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : MARCH 15, 2023.

ORDER (Per Sharmila U. Deshmukh. J.) :

1. Heard learned counsel appearing for the parties.
2. By order dated 12th December, 2011 this Court had granted interim relief in terms of prayer clause (b) directing that no coercive action be taken

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against the applicants. Rule was issued vide order dated 21st June, 2012. As the parties have amicably settled their dispute, the application is taken up for final hearing.

3. By this application, preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), the applicants seek quashing of FIR registered vide MECR No.9 of 2011 with Sewree Police Station Dadar, Mumbai for the alleged offences punishable under Sections 420 and 120-B read with 34 of the Indian Penal Code, 1860 (for short, 'IPC'). Quashing is sought on the premise that the dispute has now been amicably settled between the parties.

4. Perused the papers. It is alleged that, at the relevant time, the parties had entered into transactions pertaining to supply of iron and steel material. It is alleged that the Respondent No 2 supplied the material, however, the entire payment was not made to the respondent No.2. As such, the respondent No.2 filed a private complaint under Sections 420 and 120-B read with 34 of the IPC before the learned Additional Chief Metropolitan Magistrate, 5th Court at Dadar, Mumbai being CC No.44/SW/2011.

5. On 16th March, 2011, the Ld. Additional Chief Metropolitan Magistrate directed investigation under Section 156(3) of the Code. Subsequently, FIR came to be registered being MECR No.9 of 2011 with Sewree Police Station, Dadar, Mumbai.

6. Learned counsel appearing for the applicants submits that the applicants had paid the entire amount to one M/s. Chieftain Agencies- the Accused No 1, and the Accused No 1 had not paid the amount to respondent No.2 and as such no offence is made out as against the applicants. He would further submit that the matter has now been amicably resolved between the parties.

7. Learned counsel appearing for the respondent No.2 submits that the respondent No.2 has received the entire payment for the material supplied. He further submits that an affidavit has been filed on behalf of respondent No.2-Company through its authorized signatory Dinesh Dilip Vichare stating that there is no objection of respondent No.2 to quash and set aside the FIR registered vide MECR No. 9 of 2011 and the proceeding being CC No.44/SW/2011.

8. Perused the affidavit filed on behalf of respondent No.2. The affidavit of the authorized signatory is duly notarized and copy of the authority letter dated 30th June, 2022 is annexed to the affidavit, authorizing the deponent to give consent to allow the present application as the claim has been fully settled.

9. The authorized signatory of respondent No.2, namely, Mr.Dinesh Dilip Vichare is present in the Court today. He reiterates the contents of affidavit.

10. As stated above, both parties submits that the dispute was as regards the payment for the material supplied by the respondent No.2, and subsequently the payment has been received by the respondent No.2- Company. The transaction in question appears to be a commercial transaction of sale of goods. It is specifically stated in the affidavit of the respondent No.2 that as on date, nothing is due and payable to the respondent No.2 and hence the respondent No.2 is not interested in prosecuting the proceedings.

11. Considering the nature of dispute, which is in the nature of commercial transaction between the parties and the affidavit filed by the respondent No.2 which categorically states that the respondent No.2 is not interested in prosecuting the proceeding, we do not deem it fit to permit the continuance of the proceeding against the applicants. As such, in our opinion, there is no impediment in allowing the present application.

12. Copy of Aadhaar Card of authorized signatory of respondent No.2 is tendered in the Court. Learned APP has verified the same with original Aadhaar Card. Learned counsel for the respondent No.2 has identified the authorized signatory of respondent No.2.

13. For the aforesaid reasons, the application succeeds. FIR registered vide MECR No.9 of 2011 with Sewree Police Station Dadar, Mumbai for the alleged offences punishable under Sections 420 and 120-B read with 34 of the IPC and C.C. No 44/SW/2011 pending before the Ld. Additional Chief Metropolitan Magistrate, 5th Court at Dadar, Mumbai are hereby quashed and set aside, subject to deposit of cost of Rs.50,000/- **with Sindhutai Sapkal Organization, A/c Name – Mamata Bal Sadan, Bank Name – Union Bank of India, Saswad branch, tal. Purandar, Dist. Pune,**

A/c. No. 705802010004129, IFSC Code : UBIN0570583]. The costs to be deposited within a period of two weeks from today.

14. Rule is made absolute in the aforesaid terms. The application is disposed of accordingly.

15. As the amount of cost is to be deposited within a period of two weeks, for the purpose of recording compliance, stand over to **5th April, 2023.**

16. All concerned to act on the authenticated copy of this order.

[SHARMILA U. DESHMUKH, J.]

[REVATI MOHITE DERE, J.]