

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

CRIMINAL WRIT PETITION NO. 1596 OF 2023

1. Mohd Zaheer Ul Haq Shaikh
Aged-65 yrs, Occ- Business
R/o : 2101 21st Floor, Bismillah
Residency, Sir JJ Road, Opp JJ
Hospital Mumbai 400008
2. Parveen Zaheer Ul Haq Shaikh
Age- 56 yrs Occ--
R/o : 2101 21st Floor, Bismillah
Residency, Sir JJ Road, Opp JJ
Hospital Mumbai 400008
3. Mohd Gaus Mohd. Yasin Shaikh
Age- 56 yrs R/o : 701, Sumer Park
Seth Motishal Lane, Byculla,
Mumbai 400027 }Petitioners/Accused.

Versus

1. The State Of Maharashtra
(Through Colaba, Police Station.) }
2. Atiq Khalik Ahmed
42, Military Road, Custom

Colony Row House, Marol,
Andheri(E), Mumbai-400059 }Respondents

Ms. Ayaz Khan Advocate for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondent No.1/State.

Mr. Rizwan Merchant, for the Respondent No. 2

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

Date : 28th 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 C.R. No.40/2023 registered with Colaba Police Station, Mumbai for offences punishable under Sections 406, 409,

420 and 477-A of the Indian Penal Code.

3. Learned counsels for 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. 2/2/23 shows that Respondent No. 2 has alleged that Petitioners have cheated him in keeping and giving accounts of partnership for running a hotel and has not paid his dues therein as an entitled partner. Therefore the said crime was registered.

5. Perused the affidavit now filed and affirmed by Respondent No. 2 on 18th April 2023. He has stated therein that due to intervention of family members and respectable persons, he has amicably settled the dispute with Petitioners. He has ultimately given his no objection to quashing of impugned FIR.

6. Petitioners & 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 commercial transaction of running a hotel and partnership, which dispute is now stated to be settled. 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. Apart from that this is a case of unwilling witness/complainant and therefore any trial if permitted, will be an exercise in futility.

8. In the result, we pass following order:

(i) Writ Petition is allowed.

(ii) Impugned C.R. No.40/2023 registered with Colaba Police

Station, Mumbai for offences punishable under Sections 406, 409, 420 and 477-A of the Indian Penal Code and all the consequent proceedings therefrom are quashed and set aside.

- (iii) This is subject to condition precedent that Petitioners together shall deposit an amount of Rs. 10,000/- & Respondent No. 2 individually shall deposit Rs. 5,000/- within 4 weeks from today, in the account of High Court Legal Aid Fund (Account No. 60045304283 Bank Name: Bank of Maharashtra Branch: Fort Branch IFSC Code MAHB0000002).
- (iv) It is clarified that if the amounts are not deposited as stipulated above, by any of the parties, this Order will be cancelled automatically and the matter will be restored to file of this Court for further directions.
- (v) Rule is made absolute in the above terms. No order as to costs.
- (vi) Stand over by 4 weeks, to be placed before Registrar Judicial

(II) for reporting compliance. Ld. Registrar to close the case, if this Order is complied.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)