

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

WRIT PETITION NO.2591 OF 2023

Dilip Balu Kathara ... Petitioner.
Vs.
The State of Maharashtra & Anr. ... Respondents.

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Mr Saurabh Butala with Shubham Gangan for the petitioner.

Mr JP Yagnik, APP for State.

Mr Shashank Mangte for Respondent No.2.

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**CORAM : Nitin W. Sambre
& R.N.Laddha, JJ.**

DATE : 4 August, 2023.

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P.C.:

Prayer is made for quashing of FIR bearing C.R.No.318 of 2022 registered with Khandeshwar Police Station, for the offence punishable u/s 406, 420 r/w 34 of IPC against the Petitioner.

2. The genesis of the offence alleged against the Petitioner and other two co-accused is, the Respondent/Complainant parted with the consideration for Rs.45 lakhs and 16 lakhs to the Petitioner and

Accused nos.2 and 3 respectively. The aforesaid was pursuant to the contract dated 13.6.2018 entered into towards the amount related transactions. Petitioner has claimed that the aforesaid offence has arisen out of contractual obligation. The petitioner having realised that the contract cannot be taken to its logical end, has already returned the amount of Rs.45 lakhs to Respondent No.2. The Respondent No.2/Complainant is present in the Court and has placed on record the consent affidavit. Respondent No. 2 has acknowledged the receipt of amount of Rs.45 lakhs through a cheque in his account, which statement is made in response to the Court's query. Statement is accepted.

3. In this background, the consent affidavit is taken on record.
4. Respondent No.2/Complainant is identified by his Counsel and his Aadhar Card, is verified by the learned APP, photocopy of which is produced on record.
5. In this background, we have appreciated rival claims.
6. Respondent No.2 intends to extend his consent for quashing of FIR only against the Accused No.1 who is Petitioner no.1 and not other accused.

7. In this background, having regard to the consent affidavit and the law laid down in *Gian Singh vs State Of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*² we deem it appropriate to allow the petition in terms of prayer clause (b).

8. In view of above, the prosecution initiated against petitioner no.1 through Crime No.318/2022 for the offence punishable u/Ss 406, 420 r/w 34 of IPC is hereby quashed and set aside. As such, the conduct of the Petitioner No.1 calls for the costs being saddled in the matter. Accordingly, we quantify cost of Rs.50,000/- to be paid by the Petitioner No.1 to the Central Police Welfare Fund within period of 4 weeks and shall produce copy of such receipt in the Registry so as to report compliance.

9. In case, if the Petitioner No.1 fails to pay cost or production of receipt as directed, the order quashing the criminal proceedings against the petitioner shall stand recalled and the matter be placed before this Court for passing appropriate orders against the Petitioner No.1.

1 (2012)10 SCC 303.

2 (2014) 6 SCC 466.

10. In case, if the compliance is reported, no orders will be warranted in the matter.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]