

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

CRIMINAL WRIT PETITION NO. 4783 OF 2021

1. Ezriel Raymond Penkar
Adult Indian Inhabitant
Aged about 73 years
Occupation: Retired.
2. Rafael Ezriel Penkar
Aged: 43 years, Occ: Business,
Having address at
Zoom Apartment
Building A-501, Plot No. 368,
Off Mahakali Caves Road,
Andheri (East), Mumbai – 400093. ... Petitioners

Versus

1. The State of Maharashtra
2. The Senior Inspector of Police
MIDC Police Station.
3. Hemant Kumar Gupta
702, D Wing, Hilton Tower
Sher-e-Punjab Colony,
Andheri (E), Mumbai - 400093. ... Respondents

***WITH
CRIMINAL WRIT PETITION NO. 4784 OF 2021***

Lebana Ezriel Penkar
Adult Indian Inhabitant
Aged about 47 years
Occupation: Services
Zoom Apartments
Building A-501, Plot No. 368
Off Mahakali Caves Road,
Andheri (East),
Mumbai – 400093.

... Petitioners

Versus

1. The State of Maharashtra
2. The Senior Inspector of Police
MIDC Police Station.
3. Hemant Kumar Gupta
702, D Wing, Hilton Tower
Sher-e-Punjab Colony,
Andheri (E), Mumbai - 400093.

... Respondents

Ms Gunjan Thakkar i/by Anurag Ghag for the Petitioners in both Writ Petitions.

Mr J. P. Yagnik, APP for the Respondent Nos.1 and 2-State.

Mr Jinal Rathi i/by Rahul Karnik for the Respondent No.3 in both Writ Petitions.

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

DATE : 9 AUGUST 2023

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith, at the request and with the consent of the parties.

3. By these Criminal Writ Petitions, the Petitioners seek to quash FIR No. 55 of 2018 dated 8 February 2018, registered at MIDC Police Station, Mumbai, for the offence punishable under Sections 406, 409, 420, 120(B), 467, 468, 471 read with 34 of the Indian Penal Code. The Petitioners seek to quash the impugned FIR on the ground that they have amicably settled the dispute with Respondent No.3.

4. The dispute appears to be in respect of sale transaction of the flats.

5. When these Criminal Writ Petitions were placed before us, it was stated by the learned counsel for the parties that the dispute has been amicably settled between the parties and continuing the prosecution would serve no purpose, given their settlement. According to the learned counsel, the dispute has predominantly a civil flavour and in view of the law laid down by the Hon'ble Supreme Court in *Gian Singh v/s. State*

*of Punjab & Anr.*¹ and *Narinder Singh & Ors. v/s. State of Punjab and Anr.*², there is no impediment to quash the impugned FIR.

6. Respondent No.3 in both these petitions has filed the consent affidavits in both the Writ Petitions. He is present before us and confirms the contents of his affidavits. He is identified by his counsel. The learned APP has verified his original Aadhar Card, of which a self-attested copy is placed on record.

7. We have examined the facts of this case. It revealed from the record, particularly the affidavits filed by Respondent No.3 in these petitions, that the parties had settled their dispute by executing a Memorandum of Understanding. The affidavits support the prayers in these petitions. In such circumstances, no fruitful purpose will be achieved by keeping the prosecution alive, given the settlement between them.

8. Considering the fact that the dispute is civil and the settlement between the parties, we see no difficulty in quashing the impugned FIR *qua* the Petitioners.

1 (2012) 10 SCC 303.

2 (2014) 6 SCC 466.

9. Upon expressing our opinion, the learned counsel representing Petitioners, on instructions, submitted that each of the Petitioners will pay costs of Rs.25,000/- to the Kirtikar Law Library, Mumbai. Accordingly, we direct each of the Petitioners to pay costs of Rs.25,000/- within three weeks of this order being uploaded.

10. In view of this, the impugned FIR bearing No. 55 of 2018 dated 8 February 2018, registered at MIDC Police Station, Mumbai, is quashed and set aside *qua* the Petitioners in these petitions only.

11. Rule is made absolute in the above terms and these Petitions are disposed of subject to payment of costs as directed above.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

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PRITHIANI

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