

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

CRIMINAL WRIT PETITION NO. 6208 OF 2021

Mr Anwar Najrul Islam Hussain
Age 31 years, Occ.: Gold Smith
r/at: Room No.110, 9th floor,
Hasan House, 111 Zakaria Masjid Street,
Paydhuni, Mumbai 400 009. ... Petitioner

Versus

1. State of Maharashtra
(At the instance registered with
L.T. Marg Police Station)
2. Mr Ajahar Hussain Najarul Islam
Age 32, Occ: Business,
r/at: Building No.17, 2nd Popatlal Wadi,
4th floor, Bhuleshwar,
Kalbadevi, Mumbai 400 002. ... Respondents

Ms Suvarna Avhad Vast a/w. Prakash Salsingikar for the petitioner.

Mr J. P. Yagnik, APP for the State.
Mr Rahul Dingankar i/b Sayli Wani for respondent No.2-
Complainant.
Mr Virendra Ichalkaranjkar for the Intervenor.

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

DATE : 19 JULY 2023

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

Heard learned counsel for the parties.

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

3. The Petitioner has filed this Criminal Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, to quash FIR bearing C.R. No.175 of 2019 dated 1st June 2019 registered with L.T. Marg Police Station, Mumbai, for the offences punishable under Sections 408, 506 r/w 34 of the Indian Penal Code, and the proceedings arising from it. The petitioner seeks to quash on the ground that they have amicably settled their dispute.

4. The impugned FIR was lodged against the Petitioner by the Complainant, who is his real brother, alleging that Petitioner took away gold from his workshop and neither returned the same nor was he available to contact.

5. The learned counsel for the Petitioner and Respondent No.2 jointly stated that both brothers have settled the dispute among themselves and with the individuals whose names are

mentioned in the FIR. In such circumstances, continuing the prosecution would serve no purpose. They submit that Petitioner and Complainant-Respondent No.2 in the petition, have entered into 'Consent Terms' dated 1st October 2019. They submitted that this case falls under the purview 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

6. It reveals from the record that Respondent No.2, who filed the FIR, and the petitioner are siblings and that a certain amount of gold was given to the Complainant, who is added as respondent No.2 in this petition, by traders whose names are mentioned in the FIR, for the purpose of creating gold jewellery. This gold was then handed over to the petitioner. The traders/victims of the crime appeared before this Court and filed their consent affidavit, and were identified by their counsel. They said in paragraph-6 of their affidavit that they have received the entire gold from Respondent No.2 and have no further claim against him and that they are still having business relations with him. Additionally, the consent terms executed between the Petitioner and Respondent No.2 show

1 (2012) 10 SCC 303.

2 (2014) 6 SCC 466.

that they have resolved their dispute amicably and wish to end the impugned FIR mutually.

7. Respondent No.2 is present before the Court and states that he has no objection to quash the impugned FIR against the Petitioner, given their settlement. He was identified by his counsel.

8. We have examined present case in light of the law laid down by the Hon'ble Supreme Court in the case of ***Gian Singh and Narinder Singh (supra)***. Considering the fact that the parties have amicably settled their dispute, the possibility of conviction is remote and bleak. That being so, continuing with the prosecution when the Complainant and victims of the crime are unwilling to support the prosecution; the trial would be a futile exercise and serve no purpose. The consent affidavit filed on behalf of Respondent No. 2 endorses the prayer of quashing the FIR. In such peculiar facts and circumstances, it would be appropriate to quash the impugned FIR.

9. In view of this and for the reasons stated above, the impugned FIR deserves to be quashed and set aside. Accordingly, the impugned FIR bearing C.R. No.175/2019

dated 1st June 2019 for the offences punishable under Sections 408 and 506 r/w. 34 of the Indian Penal Code and the proceedings arising from it are quashed and set aside, subject to condition that Petitioner pay a cost of Rs.50,000/- to Kirtikar Law Library, High Court, Mumbai, within three weeks of this order being uploaded.

10. Rule is made absolute in these terms, and this Petition is disposed of subject to payment of the cost as directed above.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

Lata.S.Panjwani, P.S.