

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION [STAMP] NO.228 OF 2023**

1. Viresh Shashikant Parekh	]	
2. Girish Ganesh Mande	]	Petitioners
Vs.		
1. State of Maharashtra	]	
2. Rajesh Gupta	]	Respondents

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Mr. Amit Patil i/b Pariman Law Associates, for Petitioners.

Mr. J.P. Yagnik, for Respondent-State.

Ms. Arya Ambre, for Respondent No.2.

**A/W
WRIT PETITION NO.4834 OF 2019**

1. Lalit Kumar Kesarmal Jain	]	
2. Pranay Lalit Kumar Jain	]	
3. Lakshminarayan Krishnan	]	Petitioners
Vs.		
1. The State of Maharashtra	]	
2. The Maharashtra State Police	]	
Complaint Authority Through Its	]	
Chairman.	]	
3. Prem Krishnan Jain (IPS) (Retd)	]	
4. Rajesh Gupta	]	Respondents

.....

Mr. Amit Patil i/b Pariman Law Associates, for Petitioners.

Mr. J.P. Yagnik, for Respondent-State.

Ms. Arya Ambre, for Respondent No.4.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 24th January, 2023.

P.C.

1. Not on board. Upon mentioning, taken on board.
2. Learned Counsel for the petitioners submits that the petitions were kept today on the supplementary board, however, in the order dated 12th January, 2023, inadvertently date is mentioned as 31st January, 2023. Hence, learned Counsel for the petitioners sought production for today.
3. Heard learned Counsel for the parties.
4. Rule. Rule is made returnable forthwith, with the consent of the parties and the petitions are taken up for final disposal. Learned A.P.P waives notice on behalf of respondent-State. Ms. Ambre, learned Counsel waives notice on behalf of Rajesh Gupta - Original Complainant - Respondent No.2 in Writ Petition [Stamp] No.228 of

2023 and Respondent No.4 in Writ Petition No.4834 of 2019, (hereinafter referred to as "the Original Complainant").

5. By these petitions, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the petitioners seek quashing of the F.I.R No.214 of 2018 initially registered with the Marine Lines Police Station, Mumbai for the alleged offences punishable under sections 406, 408, 465, 467, 468, 481, 420, 120-B r/w 34 of the Indian Penal Code (for short "I.P.C") and subsequently transferred to EOW - Unit III (GC-1) and re-numbered as E.O.W C.R. No.89 of 2018 and consequently, the proceeding pending before Metropolitan Magistrate 47th Court at Esplanade, Mumbai being Case No.647/PW/2021. Quashing is sought on the premise that the parties have amicably settled their dispute.

6. Perused the papers. The petitioners in Criminal Writ Petition No.4834 of 2019 are Directors of "Kumar Builders Mumbai Realty Private Limited", whereas, the petitioners in Criminal Writ Petition (Stamp) No.228 of 2023 are the employees of "Kumar Urban

Development Private Limited". It appears that the name of "Kumar Builders Mumbai Realty Private Limited" changed to "Kumar Urban Development Private Limited" subsequently. According to the original complainant - Rajesh Gupta, the petitioners had induced him to invest a sum of Rs.18,00,000,00/- in a re-development project, pursuant to which, he invested the said amount in the said project of re-development undertaken by the petitioners in Criminal Writ Petition No.4834 of 2019. It is the complainant's (Rajesh Gupta's) case that the petitioners intentionally stalled the project, pursuant to which, there was a delay. Thereafter, it is alleged that the petitioners mortgaged 55 flats with the complainant's company i.e "Trikaal Theatres & Realty India Private Limited". It is alleged that out of the said 55 flats which were mortgaged to the complainant's company, two flats were sold by the petitioners to a third party. Pursuant thereto, the complainant lodged the aforesaid complaint/F.I.R as against the petitioners alleging the aforesaid offences. After investigation, charge-sheet was filed in the said case and the said case is presently pending before Metropolitan Magistrate 47th Court at Esplanade, Mumbai being Case No. PW/647 of 2021.

7. It appears that the petitioners had also filed a Commercial Suit bearing No.20 of 2020 in this Court. It appears that the said suit was allowed to be withdrawn in view of the amicable settlement between the parties i.e "Kumar Builders Mumbai Realty Private Limited" and "Trikaal Theaters and Realty India Private Limited and others", pursuant to the consent terms entered into between the parties.

8. In the interregnum, during the pendency of the aforesaid proceedings i.e Civil Suit and the criminal proceedings, the parties amicably settled their dispute. Learned Counsel for the original complainant has tendered consent affidavits of the original complainant in the aforesaid criminal writ petitions. The said consent affidavits are dated 8th December, 2022 duly notarized before the Notary. The said consent affidavits are taken on record. To the said consent affidavits, is annexed a photo copy of the settlement agreement entered into between the petitioners- Kumar Urban Development Private Limited (earlier known as Kumar Builders Mumbai Realty Private Limited) and Trikaal Theatres and Realty India Private Limited. As per the said settlement agreement, the petitioners - Kumar Urban Development Private Limited has to

pay a sum of Rs. 15,64,00,000/- excluding an amount of Rs.2,75,00,000/- to the complainant's company. There are certain other terms and conditions set out in the settlement agreement, which both the parties have agreed to comply with. Another term of settlement is withdrawal of criminal proceedings initiated by the complainant as against the petitioners. It also appears that pursuant to the settlement agreement entered into between the parties, commercial suit filed by the petitioners - Kumar Urban Development Private Limited, as against the complainant's company, was withdrawn.

9. Original complainant - Rajesh Gupta, in both the petitions is present in the Court. Learned Counsel for the original complainant has tendered a certified true copy of the resolution authorizing the complainant to give his consent and to do all the things necessary for quashing of the criminal proceedings. Photo copy of the resolution signed by the Director of original complainant's company - Trikaal Theatres and Realty India Pvt. Ltd is taken on record. Learned Counsel for the original complainant has also tendered a photo copy of the Aadhar Card of the original complainant. The same is taken on record. The original complainant - Rajesh Gupta,

is present in person. On being questioned, the complainant - Rajesh Gupta reiterates what is stated by him in his affidavits. He states that his company has received the amounts pursuant to the settlement agreement and that all the terms and conditions have been complied with and hence, he has no objection for quashing of the FIR/proceeding initiated at his behest against the petitioners. Learned A.P.P has verified the original Aadhar Card of the original complainant. Learned A.P.P, on the instructions of the Investigation Officer, does not dispute the fact, that having regard to the nature of transaction, there is no element of public money involved in the said transaction.

10. Considering the nature of the dispute, the settlement agreement between the parties, the consent affidavits of the complainant - Rajesh Gupta filed in both the aforesaid writ petitions and the judicial pronouncements of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another¹** and **Narinder Singh and others Vs. State of Punjab and another²**, there is no impediment in allowing the petitions.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

11. The petitions are accordingly allowed and F.I.R No.214 of 2018 initially registered with the Marine Lines Police Station, Mumbai and subsequently transferred to EOW-Unit III (GC-1) and re-numbered as EOW C.R. No.89 of 2018 and consequently, the proceeding pending before Metropolitan Magistrate 47th Court at Esplanade, Mumbai being Case No.647/PW/2021, are quashed and set aside.

12. The petitioners to deposit a sum of **Rs.5,00,000/-**, as costs. Out of the said 5,00,000/-, petitioners to deposit **Rs.2,00,000/- with the Mumbai Police Welfare Fund bearing Account No.465010100008693, IFSC No.UTIB0000465; Rs.1,50,000/- with the Janseva Foundation.** The Bank details of which are as under;

Name of Account	Janaseva Foundation
Bank Name	Bank of Maharashtra
Address	104, Navi Peth, L.B.S. Road, Pune - 411 030
Account Number	20076764639
Account Type	Saving
IFSC CODE	MAHB0000102
SWIFT CODE	MAHBINBBOCP
MICR NO.	411014031

Rs.1,50,000/- with the Jeevan Sandhya Mangalya Sansthan, bearing Account N.60134381699, I.F.S.C No.MAHB0000189/-, as costs.
The said costs to be deposited within four weeks from today.

13. Stand over to **8th March, 2023**, for recording compliance of the said deposit of costs.

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]