

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3581 OF 2023

1. Jitendra Mansukhlal Shah
2. Manshi Viren Shah,
3. Jaanvi Viren Shah,
4. Viren Jitendra Shah,
5. Kokilaben Jitendra Shah
All r/o.Mumbai.

Petitioners

versus

1. The State of Maharashtra
2. Maitri Kamlesh Shah

Respondents

WITH
INTERIM APPLICATION NO.3897 OF 2023

Arun Girdharlal Shah

Intervenor

In the matter between :

Jitendra Mansukhlal Shah and others
versus

Applicants

The State of Maharashtra and others

Respondents

Mr.Ashok Mundargi, Senior Advocate, i/by Mr.Varun V. Thokal for
Petitioners.

Mrs.M.M.Deshmukh, Additional PP for State.

Mr.Abad Ponda, Senior Advocate, with Ms.Kshitija Wadatkari,
Mr.Nitesh Bhutekar, Amita Kamble i/by Kshitija Wadatkari and
Associates for Respondent no.2.

Mr.Ali Abbas Delhiwala with Ms.Chitra Mhaske i/by Joy Legal
Consultants for Intervenor.

Mr.Ramesh Khade, ACP, Sion Division, present.

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CORAM : PRAKASH D. NAIK AND
N.R.BORKAR, JJ.

DATE : 21st December 2023

PC :

1. The Petitioners and Respondent no.2 have approached this Court by invoking Article 226 of Constitution of India and u/s.482 of Code of Criminal Procedure for quashing the charge sheet/proceedings arising out of FIR bearing C.R No.445 of 2022 registered against Petitioners with Sion Police Station, Mumbai, on 13th October 2022 for offences u/s.420, 406, 506 r/w 34 of Indian Penal Code.

2. The complainant-Respondent no.2 had alleged that her step grandfather Mr.Rajendra Daftary had a company at Panvel which was sold by him and out of the sale proceeds an amount aggregating to Rs.3,32,00,000/- (Rs.Three crores thirty two lakh only) was lying in three Dena Bank accounts jointly in the names of complainant's grandmother and step grandfather. This amount was kept by complainant's step grandfather Mr.Rajendra Daftary for his ailing wife Jaswantiben Daftary and the complainant is the nominee for all three Dena Bank accounts. Mr.Rajendra Daftary gave the entire amount in trust to his friend business partner/director i.e. Petitioner no.1 and he instructed him to use this money for well being of his old and ailing wife and the complainant after he passes away. After the death of Mr.Rajendra Daftary, complainant approached Petitioner no.1 and his family and requested them to return the mount to her, which was denied by the Petitioners. Mr.Rajendra Daftary had transferred the amount to the account of Petitioner nos.1, 2 and 3. The complainant-Respondent no.2 approached Police and the FIR was registered on 13th October 2022.

3. The Petitioners and Respondent no.2 have submitted that Petitioners had approached Sessions Court for anticipatory bail in connection with crime No.445 of 2022. Learned Sessions Judge granted interim protection to the Petitioners on the condition that they give an undertaking to deposit the entire amount to prove their bona fides in the registry of the Sessions Court. Petitioners deposited the said amount of Rs.3.32 crores in the registry of Sessions Court. With the intervention of well wishers of both the parties, they agreed to amicably resolve all the disputes and differences arising out of and in connection with crime in question and all civil cases were amicably settled which are arising out of transaction in question. Petitioners and Respondent no.2 have agreed to enter into and sign consent terms dated 23rd August 2023. Petitioners informed the investigating authorities and made statement before Sessions Court that parties have amicably settled their dispute and entered into Consent Terms dated 23rd August 2023. Learned Sessions Judge recorded that settlement has taken place between the parties and interim order was confirmed. As per Consent Terms, Petitioners had agreed that amount deposited by them before Sessions Court be allowed to be withdrawn by Respondent no.2. Respondent no.2 has agreed that FIR initiated by her against Petitioners may be quashed in view of amicable settlement between parties.

4. Learned counsel for Petitioners and Respondent no.2 jointly submitted that in light of Consent Terms, the FIR may be quashed with consent of Respondent no.2 and Respondent no.2 be allowed to withdraw the amount deposited before Sessions Court.

5. Intervention Application NO.3897 of 2023 has been preferred

by Arun Girdharlal Shah. The intervenor seeks intervention in this proceeding to oppose the relief sought by Petitioners and Respondent no.2. Learned advocate Mr.Ali Abbas Delhiwala appearing for the intervenor submitted that intervenor and Kamlesh Shah are sons Mrs.Jaswantiben Girdharlal Shah out of wedlock of Jaswantiben Girdharlal Shah with Mr.Girdharlal Shah. Mr.Girdharlal Shah died and after his death Mrs.Jaswantiben Shah married to Rajendra Daftary on 14th December 1976. Mr.Rajendra Daftary died on 27th October 2020 and Mrs.Jaswantiben Daftary on 15th January 2021. The intervenor and Kamlesh Shah were the legal representatives of late Rajendra Daftary and Jaswantiben Daftary. Kamlesh Shah passed away on 7th December 2010 leaving behind his wife Mrs.Darshana Shah, son Jay Shah and the complainant Ms.Maitri Shah. The intervenor had intervened in the application for anticipatory bail preferred by Petitioners before Sessions Court and had opposed prayer for returning the money to Respondent no.2 on the ground that he has claim over said amount. It is submitted that intervenor has filed suit before Civil Court claiming share in the amount of Rs.3.32 crores which are subject matter of present proceeding. The said amount may not be allowed to be returned to Respondent no.2. The civil suit preferred by intervenor is pending before competent Court.

6. Learned counsel for Petitioners and Respondent no.2 vehemently opposed the intervention application. It is submitted that offences are compoundable. There is amicable settlement between the complainant and Petitioners. The intervenor has no locus to intervene in this proceeding. The complainant has no objection for quashing the FIR. The amount was deposited by

Petitioners in the Sessions Court pursuant to the order passed by Sessions Court. Consent Terms were executed between Petitioners and complainant-Respondent no.2. The complainant has agreed to quash the proceedings and Petitioners have agreed to return the amount to the complainant. The intervenor is neither the complainant nor the witness in this proceeding. Hence intervention may be disallowed. The reliefs sought by the intervenor be rejected. Learned counsel for Respondent no.2 submitted that in the event Civil Court passes any order with regards to subject amount, the Respondent no.2 would deposit the said amount without prejudice and subject to challenging such order.

7. We have perused the FIR dated 13th October 2022 which is subject matter of challenge in this proceeding. Respondent no.2 is the first informant. Petitioners were impleaded as accused. The first informant had alleged that amount was entrusted to the Petitioners by her step grandfather. It was for the well being of first informant as well as her step grandmother. The intervenor has no role in the said transaction. The intervenor is neither the complainant nor the witness in the proceedings. During the course of investigation statements of various witnesses were recorded. It is evident that Petitioners had also filed a civil suit. Pursuant to the amount deposited by the Petitioners in the Sessions Court, the intervenor has also filed a suit claiming the amount deposited in the Sessions Court. The claim of intervenor is apparently on the basis that he is the son of Jaswantiben (step grandmother of complainant) from her first husband. The Consent Terms were executed between Petitioners and Respondent no.2. The Consent Terms indicate that Petitioners and Respondent no.2 agree, declare and confirm that they shall withdraw

allegations against each others. Petitioners give undertaking that they have no objection if money deposited in the Court is handed over to Respondent-2/complainant exclusively. The complainant gives her no objection-cum-consent for grant of anticipatory bail to the Petitioners. Petitioners agree, declare and confirm that money i.e. Rs.3.32 crores deposited by Petitioners in the Sessions Court along with interest belongs to complainant and she is entitled to the same. Petitioners undertake that they shall withdraw Civil Suit No.S.C1544 of 2022 filed in the City Civil and Sessions Court, Mumbai and pending for adjudication in the said Court. The complainant undertake that she shall have no objection and file her Consent affidavit or any such document as may be required for the purpose of quashing the FIR bearing No.445 of 2022, dated 13th October 2022 in this Court only after receipt of money deposited in the Sessions Court. Petitioner nos.1 and 4 agree to facilitate and co-operate with complainant to withdraw amount of Rs.63,00,000/- (Rs.Sixty three lakh only) lying in the Current Account of PMC Bank pertaining to sale of Cymaflocks and Gremach Steels Private Limited.

8. In the charge sheet it is stated that statements of Smt.Darshana Kamlesh Shah and Jai Kamlesh Shah were recorded. They have supported the complainant. It is pertinent to note that FIR was lodged by Respondent no.2. There is settlement between Respondent no.2/complainant and accused (Petitioners) against whom FIR is registered and charge sheet is filed. The intervenor cannot preclude the parties from settling the criminal proceedings or the civil proceedings through consent terms executed inter se between them. The offence is compoundable in nature. Hence there is no impediment in allowing the petition for quashing the

proceedings and execution of consent terms arrived at between parties.

9. In the aforesaid circumstances, we pass following order :

ORDER

- (i) Writ Petition No.3581 of 2023 is allowed and disposed off;
- (ii) The FIR registered with Sion Police Station, Mumbai vide Crime No.445 of 2022 for offences u/s.420, 406, 506 r/w 34 of Indian Penal Code, is quashed and set aside;
- (iii) Respondent no.2 is permitted to withdraw Rs.3,32,00,000/- (Rs.Three crores thirty two lakh only) deposited by Petitioners in Sessions Court alongwith interest, if any, accrued on the deposited amount;
- (iv) Respondent no.2 shall file an undertaking in this Court that in the event the Civil Court in the civil proceedings initiated by the intervenor passes any order establishing his claim, Respondent no.2 will deposit such amount as may be directed by Civil Court without prejudice to the rights of Respondent no.2 to challenge the said order;
- (v) The Petitioners shall facilitate and co-operate with Respondent no.2-complainant to withdraw the amount of Rs.63,00,000/- (Rs.Sixty three lakh only) lying in the current account of PMC Bank.

10. At this stage learned counsel for intervenor submits that Respondent no.2 may not be allowed to withdraw the amount for a period of four weeks to enable the intervenor to approach Civil Court for seeking appropriate relief and to challenge this order before higher court. The prayer is vehemently opposed by the counsel

appearing for Petitioners and Respondent no.2.

11. Considering the request of counsel for intervenor, we direct that Respondent no.2 shall not withdraw the amount for a period of four weeks from today.

(N.R.BORKAR, J.)

(PRAKASH D. NAIK, J.)

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