

3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, the petitioner seeks quashing of the FIR bearing C.R. No.90 of 2019, registered with the Tilak Nagar (Dombivali) Police Station, Thane, for the alleged offence punishable under Sections 420 r/w 34 of the Indian Penal Code (IPC) and consequently the proceeding pending before the learned Judicial Magistrate First Class, 3rd Court, Kalyan, Thane being R.C.C. No.630 of 2020. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2 (original complainant), as he wanted to purchase a house and learnt that the petitioner and her husband, builders and developers of Gurukrupa Enterprises wanted to sell a flat, he approached them. He has alleged that the petitioner and her husband showed him Flat No.301 in Amber Enclave, pursuant to which, he decided to purchase the said flat. Accordingly, the respondent No.2 made necessary

payment to the petitioner and her husband, however, the said flat was not handed over as promised. He has further alleged that in March 2016, when he went to see the flat, he was shocked and surprised to learn that the said flat was occupied by one Mrs. Nimbalkar alongwith her family. He has stated that the said family claimed to have purchased the said flat. He has further stated that he again approached the petitioner and her husband and informed them that legal action would be initiated against them, pursuant to which, the petitioner proposed by way of adjustment that another flat, being Flat No.1505 in 'A' Wing having larger area would be given to the complainant, however, since the area was large, an additional amount of Rs.25 lakhs would have to be paid to the petitioner and her husband. Pursuant thereto, an agreement was executed and the complainant paid the entire consideration to the petitioner and her husband. Accordingly, possession of the said flat was handed over to the respondent No.2 in September 2016. It appears that the complainant later learnt that the said flat, being Flat No.1505 in 'A' Wing in Amber Enclave was already mortgaged with Shivkrupa Sahakari Patpedhi

Limited, Mumbai, (for short 'the said Patpedhi'), by the petitioner. It appears that due to non-payment of the installments, the said Patpedhi initiated proceeding as against the petitioner and her husband. As the respondent No.2 was cheated, the aforesaid FIR was registered as against the petitioner and her husband alleging the aforesaid offences. After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned Judicial Magistrate First Class, 3rd Court, Kalyan, Thane being R.C.C. No.630 of 2020.

5. In the interregnum, during the pendency of the investigation of the aforesaid proceeding, the parties amicably settled their dispute. It appears that in the interregnum, the petitioner's husband also expired. It also appears that the petitioner's husband in his anticipatory bail application had undertaken to pay a sum of Rs.30 lakhs towards the loan amount taken from the the said Patpedhi in tranches, as set out in the order dated 17th October 2019 passed in Anticipatory Bail Application of the petitioner's husband, which is at

which is at Exhibit – 'B', page 20 of the petition.

6. Today, the learned counsel for the respondent No.2 states that the petitioner has paid a sum of Rs.58 lakhs to the bank i.e. the said Pathpedi. Learned counsel for the respondent No.2 states that as far as Rs.10 lakhs which was deposited by the petitioner's husband in the registry of this Court, the same be released in favour of the respondent No.2.

7. Learned counsel for the petitioner states that the petitioner has no objection for the same.

8. The affidavit of the respondent No.2 is annexed to the petition at Exhibit – 'F' at page 145 of the petition. In the said affidavit, the respondent No.2 has stated that the petitioner had paid a sum of Rs.58 lakhs directly to the bank and that only Rs.10 lakhs is pending to be paid to the bank, so that the flat can be released from mortgage. He states that he has no objection to the quashing of the

complaint, provided Rs.10 lakhs which is deposited by the petitioner's husband in the registry of this Court, is released in respondent No.2's favour. To the said affidavit is annexed a self attested photocopy of the aadhar card of the respondent No. 2. Respondent No. 2 is present in Court. On being questioned, he re-iterates what is stated by him in his affidavit. Learned Counsel for the respondent No.2 has identified the respondent No.2 and the learned APP has also verified the original aadhar card of the respondent No.2.

9. Petitioner is also present in Court. She states that Rs.10 lakhs were deposited in the registry of this Court pursuant to an order passed by this Court in her husband's anticipatory bail application being Anticipatory Bail Application No.2173 of 2019. She submits that in view of the demise of her husband, she has no objection, if the respondent No.2 withdraws the said amount of Rs.10 lakhs alongwith accrued interest, if any, to pay the balance amount to the said Patpedhi, so that the flat can be released from the said Patpedhi.

10. Considering the nature of transaction, the amicable settlement between the parties, the affidavit of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*², there is no impediment in allowing the petition.

11. The petition is accordingly allowed and the FIR bearing C.R. No.90 of 2019, registered with the Tilak Nagar (Dombivali) Police Station, Thane, and consequently, the proceeding pending before the learned Judicial Magistrate First Class, 3rd Court, Kalyan, Thane being R.C.C. No.630 of 2020, are quashed and set-aside.

12. The respondent No.2 is permitted to withdraw the amount of Rs.10 lakhs, alongwith accrued interest, if any, deposited by the petitioner's late husband in the registry of this Court, on furnishing document relating to proof of his identity.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

13. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

14. Learned Counsel for the respondent No.2 to file his Vakalatnama, if not filed, on behalf of the said respondent, in the registry, within two weeks of uploading of this order.

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

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.