

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1276 OF 2023

WITH

INTERIM APPLICATION NO.3500 of 2023

Suraj Madhukar Patil And Ors

...Petitioners

Versus

State Of Maharashtra And Anr

...Respondents

Mr.Amit Munde a/w Mr. Dinesh Dey, Mr. Shivam Tiwari Advocate
for Petitioners.

Mrs. M. M. Deshmukh, Addl.PP for Respondent-State.

Mr.Rudresh Jagdale i/by Prathamesh Samant for Respondent
No.2.

PI Pravin Pavle, Aazad Maidan Police Station is present.

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**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 27th MARCH 2024

P.C.:-

1. The petitioners are charge-sheeted for offences under Sections 408, 420, 467, 460, 471 read with 120-B of the Indian Penal Code, 1860. The proceedings are pending before the Court of learned Metropolitan Magistrate 64th Court at Esplanade, Mumbai vide C.C. No.500/PW/2019 which are arising out of FIR No.36 of 2019.

2. The FIR is registered at the instance of Respondent No.2/complainant. It was alleged that, the accused had indulged fabrication of cheques and other documents and caused loss of

Rs.2,88,84,946/- to the first informant.

3. The complainant was running a company namely Mehra Capital Services Private Ltd. The accused No.1 Mr.Madhukar Ganpat Patil was employed as a office assistant and accused No.2 Mr.Shiva Sawardekar was employed as an accountant. The accused No.1 along with his family members has conspired and allegedly taken undue advantage of the trust of the complainant. Blank cheques which were handed over for making payment of electricity bills, telephone bills etc. were misused.

4. It is jointly submitted by the learned Advocate for the petitioners and respondent No.2 that there is settlement between the parties. The settlement is qua the petitioners and not accused No.1 Mr.Madhukar Ganpat Patil. Petitioner No.1 is son, petitioner No.2 is wife and petitioner No.3 is daughter of accused No.1 Madhukar Ganpat Patil. It is submitted that, the consent terms were executed between Petitioners and complainant. The complainant has filed affidavit of consent for quashing the proceedings qua the petitioners.

5. The petitioners are present in the Court. The complainant is present through V.C. He has asserted that he has no objection for quashing the present proceedings against petitioners.

6. We have perused the the consent terms executed between the parties which indicates that, parties of first part are owners of Flat No. 705,

situated on the 7th Floor of the building known as Savali Co-operative Housing Society, B Wing, Building No.32, Rainart Tower, Vartak Nagar, Thane (W). and that there is no mortgage against the said flat. The parties of first part has represented that the said property had been purchased in the name of Suraj Patil (petitioner No.1) at the instructions of his father Madhukar Patil from the funds which he had illegally acquired from the party of the second part (complainant). It is represented that, at the time of purchase of the said flat, the party of the first part were unaware that at the time Madhukar Patil had illegally obtained large sums of money from the complainant and that the said flat was purchased from misappropriated amounts. It is agreed that, parties of first part shall enter into sale deed with the party of second part wherein the consideration shall be portion of the amounts owed to the second part which has been described in the sale deed. It is agreed that, sale deed shall be executed between the parties along with the present consent terms and that it will be kept with Advocate of the second part. The sale deed shall be registered within three days from the quashing of the FIR and the parties of the first part shall be handed over the vacant possession of the flat immediately thereafter. It is agreed that, the first part shall clear all society dues, property tax, water bill, society transfer fees and any other dues, if any. Party of the first part agreed to pay an amount of Rs.2,00,000/- to the party of second part in addition to the above which shall be utilized towards payment of transfer and registration

charges while the second part party shall bear the remaining expenses towards stamp duty and registration costs. Responsibility of the party of first part is to transfer the said flat to the second part by 30th January 2023 or within one months from the date of quashing of proceedings. The party of first part agreed to vacate the premises upon registration of the transfer document. In case of failure to do so, the first part party shall be liable to pay Rs.25,000/- for each months or for any part of a month thereafter. The said period may be extended by consent of both the parties in case of any procedural issues that may arise during the transfer. It is also agreed that the first part party shall approach the High Court for quashing of FIR and the second part confirmed that their representative shall appear before the Court and give consent to the quashing of the FIR. The first part party shall present the draft sale deed for registration and hand over Rs. 2,00,000/- and NOC from the society, if any, to the second part after order is passed by High Court quashing the FIR. The second part party confirmed that the amount agreed to be paid under the consent terms towards full and final settlement of the amount in dispute qua the first part and after the completion of the consent terms, the second part shall have no pending claims civil or criminal against the first part. Parties have agreed that the present settlement is limited to the liability of the first part and shall have no bearing on the remaining dues and the proceedings pending against the remaining accused. The first part party states that, they also have no claims

civil or criminal against the second part. Quashing of the FIR shall be made subject to registration of sale deed and the payments of the money described in detail in the consent terms.

7. Sale deed executed between petitioners and complainant is annexed to this petition. Affidavit is filed by the complainant that there is compromise between the parties and he has no objection for quashing the FIR and the proceedings.

8. Learned APP submitted that the accused No.1 and the petitioners had acted in connivance with each other. The complainant was deceived of huge amount. There is charge of conspiracy. The settlement is executed only between some of the accused.

9. In rejoinder, learned Advocate for petitioner submitted that, in view of settlement between the parties, the proceedings can be quashed qua petitioners.

10. The case of the prosecution is that, the accused No.1 was employed with the complainant. The petitioners had no knowledge about the alleged act of misappropriation committed by accused No.1. There is no evidence to substantiate the charge of conspiracy. Petitioners are wife, son and daughter of accused No.1. Parties have executed consent terms and amount of Rs.2,00,000/- has been agreed to be paid to the complainant and sale deed as stated above has been executed with complainant in respect to

flat premises. It was also submitted that, money which was allegedly misappropriated by accused No.1 were credited to the joint account of petitioners and accused No.1. Reliance is placed on the decision of the Apex Court in the case of **Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and Anr.** delivered in Criminal Appeal No.1040 of 2012 decided on 20th July 2012 and another decision of this Court in the case of **Alpesh Arvindbhai Patel & Ors. Vs. State of Maharashtra and Anr.** dated 17th March 2023.

11. In the case of **Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat And anr.** (supra), although, the Court was not dealing with the issues whether the proceedings can be quashed against some of the accused, the factual matrix of the said decision indicate that, in view of settlement the proceedings were quashed against one of the accused. In the said decision charge of 120-B was invoked. In view of settlement, the Apex Court quashed the proceedings against the appellants therein.

12. In the case of **Alpesh Arvindbhai Patel & Ors. Vs. State of Maharashtra and Anr.** (supra), this Court quashed the proceedings partially against some of the accused. The Division Bench has referred to decision of the Apex Court in the case of **Lovely Salhotra and Anr. Vs. State (NCT of Delhi) and Anr.**¹

¹ 2017 SCC OnLine SC 636

13. In the case of **Lovely Salhotra and Anr. Vs. State (NCT of Delhi) and Anr.** (supra), the Apex Court has held that, the Apex Court was wrong in holding that FIR cannot be quashed in part and it ought to have appreciated the fact that appellants therein cannot be allowed to suffer based on complaint filed by respondent No.2 only on ground that investigation against co-accused is still pending. The decision of the Apex Court was followed by Delhi High Court in the case of **Mrs. Poonam Khanna Vs. State and Ors.**, wherein the request of partial or part quashing of the FIR only qua accused with whom the complainant had compromised, was considered.

14. As stated above, the petitioners are the wife, son and daughter of accused No.1. The complainant has executed consent terms with the petitioners. Apparently, the accused No.1 was employed with the complainant and had allegedly misused the cheques and other documents and misappropriated the amount. There was joint account of the accused No.1 and petitioners. Settlement is not qua accused No.1 and 2.

15. In the light of factual matrix of this case and in view of the settlement between the parties, the impugned proceedings can be quashed qua the petitioners.

ORDER

- (i) Criminal Writ Petition No. 1276 of 2023 is allowed.
- (ii) The impugned proceedings in C.C. No.500/PW/2019 pending before the Court of learned Metropolitan Magistrate 64th Court at Esplanade Mumbai vide FIR No.36 of 2019 registered with Azad Maidan Police Stanton, Mumbai is quashed and set aside qua petitioners.
- (iii) The petitioner shall pay the cost of Rs.15,000/- each to Central Police Welfare Fund within a period of four weeks from today and submit the receipt of the same in the Registry of this Court. The details of the Bank Account for payment of costs are as under:-

Bank Name : Axis Bank Ltd.
Branch Name : Worli, Mumbai [M.H.], Mumbai – 400 025
Account Name : Central Police Welfare Fund
Account No. : 914010029005759
IFSC Code : UTIB0000060

- (iv) Writ Petition stands disposed off.
- (v) In view of disposal of Writ Petition, Interim Application No.3500 of 2023 does not survive and is accordingly disposed off..

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)