



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2814 OF 2024

1. Nazir Ahmed Yusuf Mathiya
Of Bombay, Adult, Indian Inhabitant,
Aged about 51 years, Occupation: Business,
Residing at K. D. Paradise Building,
Room No.504, 5th Floor, Western Park,
Kashigaon, Mira Road (East),
Thane – 401 104.
2. Mustafa Hasanbhai Ghanchi alias Munna,
Of Gujarat, Adult, Indian Inhabitant,
Aged about 40 years, Occupation: Business,
Residing at Ashapura Vaas, near Vijay Tanki,
Tharad, Taluka-Badgaon, District-Banaskta,
Gujarat – 385 505.
3. Abdul Hamid Yusuf Mathiya,
Of Gujarat, Adult, Indian Inhabitant,
Aged about 50 years, Occupation: Business,
Residing at Village – 1472 Gaziwala Vaas,
Mazadhar, Taluka-Badgaon, District-Banaskta,
Gujarat – 385 505.
4. Munnabhai Nagbhai Purohit,
Of Gujarat, Adult, Indian Inhabitant,
Aged about 33 years, Occupation: Business,
Residing at Plot No.1668/2, 1st Floor,
Sector-5/C, Gandhinagar, Budki Chawk,
Pathan, Gujarat – 385 505.

.....Petitioners

Vs.

1. The State of Maharashtra,
L. T. Marg Police Station, Mumbai,
to be served through Public Prosecutor,
High Court, Mumbai.
2. Jivan Sardarmal Jain,

Age: 57, Occupation: Business,
Residing at 1203, Sumer Tower No.2,
Love Lane, Mazgona, Mumbai – 400 010.

.....Respondents

Mr. Ganesh Bhubal with Mr. B. D. Shinde, i/b. Mr. Vinesh Jain, for the
Petitioners.

Mr. Ajay Patil, APP for Respondent No.1-State.

Mr. M. D. Mali, for Respondent No.2.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**
DATE : 2nd SEPTEMBER, 2024.

P. C.:

- 1) Petitioners seek quashing of C.C.No.892 of 2022 pending on the file of learned Metropolitan Magistrate, 28th Court, Esplande, Mumbai arising out of FIR bearing No.940 of 2022 dated 1st October 2022 registered with the L. T. Marg Police Station, Mumbai for offences punishable under Sections 409 and 420 read with 34 of the Indian Penal Code, 1860 (“**IPC**”).
- 2) It is alleged by the Respondent No.2 (First Informant) that, the Petitioners accepted an amount of Rs.50 Lakh from him assuring to deliver the same by courier to a Recipient in Mumbai and instead appropriated the same to their personal use. Being aggrieved by this, he lodged the FIR giving rise to the impugned proceedings.
- 3) It appears that in the interregnum, the parties decided to amicably resolve their disputes. The Respondent No.2 has filed an Affidavit dated 28th August 2024 duly affirmed before a Notary Public. He states in the Affidavit that, he has recovered part of the amount from the Petitioners

and some amount is seized by the police from the Petitioners which are in the custody of the police till date. He contends that, since the money is recovered, he has no grievance against the Petitioners and does not wish to proceed with the prosecution. He thus states that, he has no objection to quashing of the proceedings impugned herein.

4) Respondent No.2 is present in Court. Through his counsel, he reiterates his stand in the Affidavit. The Respondent No.2 seeks a direction to the police to release the amount lying with them to him.

5) Considering the nature of the dispute, relations between the parties and the Affidavit of the Respondent No.2, we are inclined to allow the present Petition.

6) As we expressed our opinion for quashing of C.C.No.892 of 2022 pending on the file of learned Metropolitan Magistrate, 28th Court, Esplande, Mumbai arising out of FIR bearing No.940 of 2022 dated 1st October 2022 registered with the L. T. Marg Police Station, Mumbai for offences punishable under Sections 409 and 420 read with 34 of the IPC, Mr. Bhujbal, learned Advocate for the Petitioners on instructions submitted that, the Petitioners will pay a cost of Rs.25,000/- each, totaling to Rs.1,00,000/- to the Armed Forces Battle Casualties Welfare Fund within a period of two weeks from the date of uploading of the present Order on the official website of High Court of Bombay. The said statement is accepted as an undertaking to the Court.

7) As the Respondent No.2 is successful in bringing the Petitioners for amicable settlement by lodgment of present crime, Mr. Mali, learned Counsel for Respondent No.2 on instructions submitted that, the Respondent No.2 will also pay a cost of Rs.25,000/- to the Armed Forces Battle Casualties Welfare Fund within a period of two weeks from the date of uploading the present Order on the official website of High Court of Bombay. The statement is accepted as an undertaking to this Court.

8) In view thereof, we direct the Petitioners and the Respondent No.2 to pay a cost of Rs.1,00,000/- and Rs. 25,000/- respectively to the Armed Forces Battle Casualties Welfare Fund within a period of two weeks from the date of uploading of present Order on the official website of High Court of Bombay.

8.1) Details of the bank account for payment of cost are as under :-

Name of Fund	:- Armed Forces Battle Casualties Welfare Fund.
Bank Name	:- Canara Bank
Branch Name	:- South Block, Defence Headquarters, New Delhi-110011.
Account Number	:- 90552010165915
IFSC Code	:- CNRB0019055
Type of Acct	:- Saving

8.2) Petitioners and the Respondent No.2 to deposit the said cost of Rs.1,00,000/- and Rs.25,000/- respectively within stipulated period as noted above and submit receipts of the same in the Registry of this Court.

- 9) In view of above and subject to payment of cost by both the parties, Petition is allowed in terms of prayer clauses (a) and (a1).
- 10) The police official in the L. T. Marg Police Station are directed to release the amount they have recovered from the Petitioners and lying with them to the Respondent No.2 forthwith.
- 11) It is made clear that, if the cost is not paid by either of the parties within stipulated period as mentioned above, the Petition shall stand revived automatically and in that event, the trial Court will proceed with the criminal proceedings expeditiously
- 12) List the Petition on board on 20th September 2024, under caption 'for reporting compliance' of present Order.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)