

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.695 OF 2024

Shamin Ebrahim Botawala
and others

.....Applicants

Versus

State of Maharashtra
and others

.....Respondent

Mr. A.P. Mundargi, Senior Advocate a/w. Hrishikesh Mundargi,
Pratap Nimbalkar, Paavani Chadha for the Applicants.

Smt. Mahalakshmi Ganapathy, APP for the Respondent No.1-
State.

Mr. Taraq Sayyed, Advocate for the Respondent No.2.

Mr. Madan Gupta, Advocate for the Respondent Nos.3 & 4.

**CORAM : SARANG V. KOTWAL &
DR.NEELA GOKHALE, JJ.**

DATE : 15th OCTOBER, 2024

P.C. :

1. This is an Application for quashing and setting aside the FIR registered vide C.R. No.29/2024 registered with EOW, Unit-06 (corresponding to C.R. No.143/2024 registered with Mahim police station) for the offences punishable under Sections 409, 420 & 120-B of IPC.

2. The FIR is lodged by the Respondent No.2 herein (hereinafter referred to as 'the informant'). The Applicant No.4 is

a Public Charitable Trust (hereinafter referred to as 'the Trust'). The Applicant Nos.1, 2 & 3 are their Trustees. The Respondent Nos.3 & 4 are their remaining Trustees. The Applicants are mentioned as accused in the FIR. The gist of the FIR is that the Trust is owning various properties in Mumbai. The concerned properties which are the subject matter of the FIR are 'M/s. Calcutta Confectionery Works & Sitladevi Industrial Estate' situated at Mahim and Richard Building, Nicole Building situated at Horniman Circle, Fort, Mumbai. There were many tenants of the tenements of the properties belonging to the Trust. In 1997, the then Trustees of the Trust including Dr. Mohammad Ahmad Botawala (since deceased), the Applicant No.1 and Suleman Botawala (since deceased) had given proposal to the informant that he could take steps to get the properties vacated and for that purpose he could spend his own money. In return, they had promised the informant the rights to redevelop the properties. Believing them, he started working in that direction. The FIR goes on to mention various steps he had taken to get the properties vacated. There is a reference to a resolution passed by the Trustees in October, 2013 in respect of the property at

Mahim. The FIR gives the details of the amount which he has spent for making payment to the tenants for getting the properties vacated. There are allegations in the FIR that the Applicant No.1 in collusion with other accused sold the property at Mahim to a third party for Rs.28 Crores. There are further allegations that there was discussion about the pending disputes. The informant paid Rs.2,59,00,000/- in cash. The informant had already spent Rs.22 Crores for getting the properties vacated. In spite of that the trustees did not take any steps to honor their commitment and thus as a summary of the allegations in the FIR, according to the first informant, he had suffered a loss of Rs.21 Crores. On this basis, the FIR was lodged.

3. The investigation is still going on. In this background, after registration of FIR on 10.4.2024 the parties have arrived at settlement. The first informant is present in the Court. He is identified by his learned counsel. He has filed an affidavit affirmed before the Assistant Registrar of this Court. There are averments in the affidavit that the Applicants and he himself have entered into a compromise and that they have settled their differences/disputes amicably. They have entered

into consent terms dated 7.5.2024 filed individually in different suits pending before the Small Causes Court, Mumbai. In view of the consent terms, the Applicants and the informant were withdrawing all their respective allegations against each other. It is further mentioned that the dispute which was subject matter of the FIR has not affected any fraction of society and it is purely a personal dispute. He has specifically mentioned that he did not want to pursue the present case arising out of C.R. No.29/2014 registered with EOW, Unit-IV. In the last paragraph of the affidavit, he has given his specific no objection for quashing and setting aside the FIR.

4. Learned Senior Counsel appearing for the Applicants as well as learned counsel appearing for the first informant as also learned counsel appearing for the Respondent Nos.3 & 4 make a joint submission that this is purely a commercial dispute between the parties. The society is not affected. The parties have settled their issue and there is no impediment in quashing and setting aside the FIR. Even learned APP does not have any objection, on behalf of the investigating agency, if the FIR is quashed and set aside.

5. We have considered these submissions. In this context, a reference can be made to the observations of the Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab and another**, as reported in **(2012) 10 SCC 303**. The Hon'ble Supreme Court has observed that in the cases arising from commercial, financial, mercantile and similar transactions where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court can quash the criminal proceeding if it is clear that the possibility of conviction is remote and bleak and continuation of criminal case would not be in the interest of justice.

6. In the present case, we find substance in the submissions of learned counsel appearing for the parties that it is purely a personal dispute between the parties which is commercial in nature.

7. Considering the overall settlement, referred to hereinabove, the chances of conviction are remote. The society in general is not affected. All the necessary parties, including all the trustees, the trust and the informant are before the Court.

Having due consideration to these facts we are of the opinion that the present FIR can be quashed and set aside and the Petition can be allowed.

8. Hence, the following order:

:: O R D E R ::

- i. The FIR registered vide C.R. No.29/2024 registered with EOW, Unit-06 (corresponding to C.R. No.143/2024 registered with Mahim police station, Mumbai) and the consequent proceedings arising out of the said offence are quashed and set aside.
- ii. The Application is disposed of accordingly.

(DR.NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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