

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1051 OF 2024**

1. Aarif Abdul Razak Chunawala
Aged:-45 years, Occ:-Business
2. Farook Razk Chunawala
Aged-48 years, Occ-Business
3. Abdul Razak Chunawala
Aged-73 years, Occ-Business
4. Sameer Abdul Razak Chunawala
Aged-48 years, Occ- Business
All Directors of M/S. Fairmont Construction
Pvt Ltd, (now known as M/S Faime Makers
Pvt. Ltd.) having address at 201, 202,
Vastu Prestige, Near Fame Adlabs
Link Road, Andheri West
Mumbai 400053

.....Applicants

Vs.

1. Ahmed Junaid Motiwala
Age:- 25 Years, Occupation: Business
Director of LPHP Real Estate Private Ltd.
Having their address at Unit No.702,
Hub Town, Solaris NS, Phadke Road
Sai Wadi, Andheri East
Mumbai 400 069
2. The State of Maharashtra,
At the instance of EOW Unit-5,
Mumbai.

.....Respondents

Mr. Shailesh Kantharia, for the Applicants.

Mr. Vikram Sutaria, with Mr. Hrituraj Singh h/for Mr. Agastya Desai, for
Respondent No.1.

Mr. Ajay Patil, APP for the Respondent No.2-State.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**
DATE : 1st OCTOBER, 2024.

PC:-

1) Applicants seek to quash Criminal Proceedings bearing C.C.No. 873/PW/2021 pending on the file of learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai arising out of C.R.No.81 of 2021 dated 18th August 2021 registered with EOW Unit No.5 (initially registered as C.R.No. 639 of 2021 dated 18th August, 2021 with Amboli Police Station) for offences punishable under Section 406, 409, 420 read with 34 of Indian Penal Code, 1860 ('IPC').

2) The dispute between the parties arose on account of investment made by the Respondent No.1-First Informant, Director of LPHP Real Estate Private Ltd. in a Company namely, M/S. Fairmont Construction Pvt Ltd, (now known as M/S Faime Makers Pvt. Ltd.) of which Applicants No.1 to 4 are Directors. It is alleged that the Applicants fraudulently induced the Respondent No.1 by making false promise and executing forged documents to make investment in their Company and failed to give returns on the investment along with principal amount as agreed. Hence, the Respondent No.1 filed the FIR impugned herein.

3) Mr. Shailesh Kantharia, learned counsel appears for the Applicants and Mr. Vikram Sutaria, learned counsel appears for the Respondent No.1. Mr. Ajay Patil, learned APP represents the State.

4) Learned counsels of both the Applicants as well as the Respondent No.1 state that, considering the decision of the parties to resolve their dispute by amicable settlement, Applicant No.1 and representative of LPHP Real Estate Private Ltd. have executed Settlement Deed dated 25th July 2024 before the National Company Law Appellate Tribunal at New Delhi in Company Appeal (AT) (INS) No.322 of 2024. Under the said Settlement Deed, LPHP Real Estate Pvt. Ltd. has received the amount of Rs.2,85,00,000/- by way of Demand Draft. In pursuance of the said Settlement Deed, Respondent No.1 has filed his Consent Affidavit dated 1st October 2024 duly affirmed before a Notary Public. In paragraphs No.6 and 7 thereof, Respondent No.1 has given his no objection to quash and set aside the present criminal proceedings.

5) Respondent No.1 is present in the Court and reiterates the statements made by him in the Affidavit. We accept the said statements.

6) Considering the facts in the present case and the consent Affidavit of Respondent No.1, we are inclined to quash Criminal Proceedings bearing C.C.No. 873/PW/2021 pending on the file of learned Additional Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai arising out of C.R.No.81 of 2021 dated 18th August 2021 registered with EOW Unit No.5 (initially registered as C.R.No. 639 of 2021 dated 18th August, 2021 with Amboli Police Station).

7) As we expressed our opinion for quashing the said criminal

proceedings, both learned counsels appearing for the Applicants and the Respondent No.1 on instructions submit that, the Applicants and the Respondent No.1 will pay Rs.1,00,000/- (Rupees One Lakh Only) each, 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 Bombay High Court. The said statement is accepted as an undertaking given to this Court.

8) In view thereof, we direct the Applicants to pay the cost of Rs.4,00,000/- (Rupees Four Lakhs Only) and the Respondent No.1 to pay the cost of Rs.1,00,000/- (Rupees One Lakh Only) 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) The details of the Bank Account for payment of cost are as under :-

Bank Name	:- Canara Bank
Branch Name	:- South Block, Defence Headquarters, New Delhi – 110 011
Account Name	:- Armed Forces Battle Casualties Welfare Fund
Account Number	:- 90552010165915
IFSC Code	:- CNRB0019055

8.2) Applicants and the Respondent No.1 to deposit the afore-stated

cost within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

9) In view of the above and subject to payment of cost by the Applicants and Respondent No.1, Application is allowed in terms of prayer clause (b).

10) It is made clear that, if the cost is not paid by either of the parties within stipulated period as mentioned above, the Application stand revived automatically and in that event, the trial Court shall proceed with the criminal proceeding expeditiously

11) List the Application on board on 22nd October 2024, under caption 'for reporting compliance' of present Order.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

Digitally
signed by
SHAMBHAVI
NILESH
SHIVGAN
Date:
2024.10.01
18:53:51
+0530