

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3544 OF 2024

Feroz Ahmed Shaikh

...Petitioner

Versus

State Of Maharashtra And Anr

...Respondents

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Adv. Zoheb Shaikh, Adv. Muskan Shaikh, Advocate for the
Petitioner.

Ms. Supriya Kak, APP for the State.

CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.

DATE : 7th JANUARY, 2025

P.C. :-

1. Respondent No.2 has been served with the Court notice.

2. When the matter was heard on 20th August, 2024, this
Court (A.S. Gadkari & Dr. Neela Ghokhale, JJ.) had passed to the
following order :

*"1) Issue notice to Respondent No. 2, returnable on 1st
October 2024.*

*2) Learned Advocate for the Petitioner is directed to supply
spare copies of the Petition in the Registry within a period of
two weeks from today, failing which the Petition shall stand*

dismissed without further reference to this Court.

3) Learned counsel for the Petitioner submitted that, as a matter of fact the Petitioner has refunded entire amount of Rs. 48,50,000/- to the Respondent No. 2. The said fact is mentioned in the Consent Terms dated 24/8/2021 filed in BA No. 1178 of 2021 before the Addl. Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. He drew our attention to the Order dated 24/8/2021 passed by the learned Magistrate and the Consent Terms dated 24/8/2021 annexed to the Petition.

4) In view thereof till the returnable date, ad-interim relief in terms of prayer clause (c)."

5)

3. Respondent No.2 has not appeared either in person or through an Advocate.

4. The F.I.R. No.77/2019, dated 27th February, 2019, registered at Vile Parle Police Station, indicates that the dispute was of a commercial nature between the parties. C.R. No.77/2019 was registered with Vile Parle Police Station and later on transferred to the DCB CID Unit-X and renumbered as C.R. No.21/2019.

5. The learned Advocate for the Petitioner informs that after the settlement took place before the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade Mumbai, in C.R. No.21 of 2019, the second Respondent/First Informant is not appearing even before that Court.

6. By an Application dated 09th September, 2021, the First Informant and the Accused jointly appeared before the Additional Chief Metropolitan Magistrate in C.R. No.21/2019 and tendered an Application to indicate that the entire amount of Rs.48,50,000/- had been paid to the First Informant. With regard to a disputed cheque, the First Informant returned the said cheque for the amount of Rs.28,50,000/- and in turn, received the Demand Draft No.442101, dated 09th September, 2021 for an amount of Rs.28,50,000/-.

Paragraph No.2, 3, 4 and 5 of the said Application read as under :

- “1) That the aforesaid C.R.s have been registered at my instance and based on that the Accused have been arrested.*
- 2) The contention of F.I.R. and the C.R.s been settled and the Accused has paid the amount by D.D. and cheque total in the sum of Rs.48,50,000/- the cheque was post dated cheque.*
- 3) Today the First Informant returning the said cheque and receiving the D.D. 442101 dt. 9-9-2021 of Rs.28,50,000/- as a full and final settlement as per the content of the F.I.R. and remand Application. Now, nothing has been left to pay the amount to the First Informant.*
- 4) The matter is settled or corresponded and the First Informant has no such claim as far as the amount mentioned in the F.I.R. and remand application.*
- 5) We further say that the First Informant do not wish to proceed further in the matter, as the she has received amount from the Accused, without any*

7. On the aforesaid pleadings before the concerned Court, the settlement has been verified, and the stamp of the Court has

been affixed.

8. It is contended by the learned Advocate for the Petitioner that since the First Informant has received her entire dues, she may not be interested in appearing before this Court. Considering the purely commercial transaction and in the light of the judgment of the Hon'ble Supreme Court in *Narinder Singh & Ors. Vs. State of Punjab & Anr.*, (2014) 6 SCC 466, this Petition can be considered.

9. In light of the above, **this Petition is allowed** in terms of the prayer clauses (a) and (b), which read as under :-

(a) That this Hon'ble Court may be pleased to quash and set aside the chargesheet which is numbered as PW/775/2021 in the file of the Hon'ble 37th Metropolitan Magistrates Court at Esplanade-Mumbai.

(b) That this Hon'ble Court may be pleased to quash and set aside the FIR:21-2019 for the offences under 406, 420, 506 (2), 504 7 34 of the FIR:21-2019 for the offences under 406, 420, 506 (2), 504 7 34 of the Indian Penal Code, 1860 lodged by Respondent/1 (DCB CID Unit X) at the behest of Respondent/2.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)