

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5551 OF 2024

1. **Yusuf Noor Mohammed Khan,**)
Aged 63 years, Occupation: Developer,)
Address: Flat No. 203, KGN Palace,)
Near Samta Bank, Bandra (West),)
Mumbai 400 050.)
2. **Asif Iqbal Ansari,**)
Aged 56 years, Occupation: Developer,)
Address: A/401, Nilgiri Lokhandwala,)
Andheri (West), Mumbai 400 053.)
3. **Rizwan Gulam Mohammed Patka,**)
Aged 51 years, Occupation: Developer,)
Address: Bungalow No. 39/40,)
Aashiyaana Villa, Gold Valley, Sector-D,)
Tungrali, Lonavala, Maharashtra 410 401.)
4. **Shahid Sagir**)
Aged 55 years, Occupation: Developer,)
Address: Flat No. 501, Rabeeya Palace,)
33, D'Monte Street, Santosh Nagar,)
Bandra (West), Mumbai 400 050.)...Petitioners

Versus

1. **Remon John Fernandes,**)
Aged 46 years, Occupation: Service,)
Address: Flat No. 702, Solitaire Apartment)

Co-operative Housing Society Ltd.,)
D'Monte Lane, Orlem, Malad (West),)
Mumbai 400 064.)

2. **The State of Maharashtra,**)
(At the instance of Malad Police Station)
vide in C.R. No. 0496 of 2024))...Respondents

Mr. Vinod Vasant Kashid a/w Mr. Abdul Shaikh a/w Mr. Sumit Bhate for the Petitioners.

Mr. D.P. Singh i/b Mr. D. H. Shukla for the Respondent No. 1.

Mr. Y. M. Nakhwa, A. P. P. for the Respondent No.2-State.

**CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.**

DATE : 22ND SEPTEMBER, 2025.

ORDER (Per Sandesh D. Patil, J.) :-

1. At the outset, the learned Counsel for the Petitioner seeks leave to amend the petition, to annex the chargesheet. Since, during the pendency of the petition, chargesheet is filed in the said case. Leave granted. Amendment to be carried out forthwith.

2. By the present petition, the Petitioners are seeking quashing of the C.R. bearing no. 496 of 2024 registered with the Malad Police Station, Mumbai for the offences punishable under Sections 420, 465 read with section 34 of the Indian Penal Code and Sections 3, 5, 10, 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the chargesheet and the proceeding, being Case No.3063/PW/2025 pending before the learned Metropolitan Magistrate Court, Borivali, Mumbai.

3. The Petitioners are original accused. The Respondent no.1 is the original complainant. The Respondent no.1 is the Secretary of the Solitaire Apartment Co-operative Housing Society Limited. According to the Respondent no.1-Complainant, on 4th April 2014, he purchased a flat, being No.702 in the said society from the Petitioners by executing an Agreement for Sale, which was duly registered; that in the year 2017, one of the Petitioners informed him that the work of building had been completed and that the Respondent no.1 could occupy the premises in the said

building. The Respondent no.1 asked the Petitioner about the Occupation Certificate to which he replied that the Occupation Certificate is awaited. On 19th August 2017 the Petitioner demanded Rs.80,350/- (Rupees Eighty Thousand Three Hundred and Fifty only) from the Respondent no.1. The Respondent no.1 paid the said amount by cheque. The Petitioners demanded a further amount from the Respondent no.1 towards maintenance charges. The Petitioners had also asked for maintenance charges from all other occupants of the building.

4. In the year 2019, the Respondent no.1 and another member Mr. Sunil Babu made an enquiry with the other member of the society regarding the maintenance and society registration charges, occupation certificate, fire NOC and society registration, they all informed the Respondent No.1 and Mr. Sunil Babu that, they have paid the amount to the Petitioners.

5. On 20th December 2019 the Respondent no.1 received a letter from the Municipal Corporation of Greater Bombay to pay

the maintenance for the year 2017 to 2019. The Respondent no.1 further stated that although it was mentioned in the Agreement for Sale, that the petitioners would form and register the society, however, they failed to do so. It was further stated that in June, 2023 the Respondent no.1 came to know that the signatures of certain members; as well as his signature was forged in the correspondence exchanged by the Petitioner with the Water Department, P-ward of the Municipal Corporation.

6. The Respondent no.1 therefore, lodged an FIR bearing No. 496 of 2024 with the Malad Police Station under the provisions of section 420, 465, 34 of the Indian Penal Code as well as Sections 3, 5, 10, 11 and 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

7. Petitioners have filed the present petition for quashing of the First Information Report so registered with the Malad Police Station at the instance of the Respondent no.1. During the

pendency of the petition, the police completed the investigation and chargesheet was filed.

8. The Respondent no.1- original Complainant appeared in the present petition and filed his affidavit. It was contended by the Respondent no.1 that he has settled the dispute with the petitioners. It was contended by the Respondent no.1 that an agreement dated 24th December 2024 was executed between the Respondent no.1, other members of the society and the Petitioners on the other hand. The said agreement was produced by the parties before this Court in the Anticipatory Bail Application No. 2678 of 2024 filed by the Petitioners. The learned Single Bench of this Court disposed of the Anticipatory Bail Application No.2678 of 2024 on 11th February 2025 specifically advertent to the Agreement dated 24th December 2024. The complainant had produced the copy of the Minutes of the Special General Body Meeting (SGM) of the Society by the name Solitaire Apartment Co-operative Housing Society held on 8th December 2024 at 4:00 p.m. at the society premises. In the Minutes, there was an Agenda to discuss and approve draft consent

terms. The society approved the draft consent terms and authorised the present Respondent no.1 to enter into the consent terms. The Special General Body Meeting also gave their authorisation to the present Respondent no.1 to sign and execute the draft consent terms in the writ petition for quashing and also filing consent affidavit in the said petition.

9. The Petitioner no.4 also filed an affidavit stating that the Petitioners have undertaken to pay a sum of Rs. 43,75,000/- (Rupees Forty-three Lakh and Seventy-five Thousand only), to the society on or before 28th May 2025. It was further mentioned that part payment of Rs. 25,00,000/- (Rupees Twenty-five Lakhs only) was already paid to the society and the balance amount of Rs. 18,75,000/- (Rupees Eighteen Lakh and Seventy-five Thousand only) was undertaken to be paid to the society and for which, the Petitioners have issued post-dated cheque. The Petitioners had given an undertaking that the cheque shall be honored on its presentation by the society.

10. Heard learned Counsel appearing for the parties. Perused the copy of the writ petition, copy of the Affidavit-in-Reply filed by the Respondent no.1 on behalf of the Society as well as the affidavit filed by Petitioner no.4. The dispute between the parties was essentially a dispute between the members of the Co-operative Housing Society and the Promoters/Developers of the building. The dispute was essentially civil in nature, wherein the Petitioners-Developers had not complied with certain obligations which they were supposed to comply under the provisions of the Maharashtra Ownership of Flats Act.

11. In the aforesaid circumstances, the parties have come together and decided to amicably settle their dispute. The dispute is not such which involves any serious offence. It further appears that the Special General Body Meeting of the society was conveyed and the society members have decided in their own interest that they would compromise/settle the dispute with the developer. The Petitioners-Developers have decided to pay a lump sum amount of Rs.43,75,000/- (Rupees Forty-three Lakh Seventy-five Thousand

only) to the society.

12. We have perused the copy of the minutes of the Special General Meeting in particular. We have asked the Respondent no.1 who was present in the Court as to whether the consent terms were drawn out of free will and volition. He answered that the society has entered into consent terms on their own volition

13. Both the parties inform us that even the Anticipatory Bail Application filed by the Petitioner was disposed of in terms of the Agreement dated 24th December 2024 dated which was presented before the learned Single Bench of this Court. The parties were identified by their respective counsels, and we are satisfied that there was a bonafide settlement between the parties.

14. The Apex Court has held in the judgment of ***Gian Singh v. State of Punjab reported in (2012) 10 SCC 303*** wherein it was held that the power of the High Court u/s 482 of the Cr.P.C. is of wide latitude and has no statutory limitation.

15. In the premises aforesaid, we are of the considered opinion that the dispute between the parties has been put to rest. We are of the opinion that, the inherent powers of this Court should be exercised for quashing the First Information Report as well as the chargesheet filed subsequent thereto and the pending proceeding.

16. Since the police machinery have invested their valuable time and filed chargesheet, we deem it fit, to quash the First Information Report as well as chargesheet by imposing costs on the Petitioners as well as the Respondent no.1.

17. In the result, we pass the following order :-

- i. The FIR bearing no. 496 of 2024 registered with the Malad Police Station for offences punishable under sections 420, 465 read with section 34 of the Indian Penal Code and sections 3, 5, 10, 11 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the chargesheet and Case No. 3063/PW/2025 pending before the learned

Metropolitan Magistrate Court, Borivali, Mumbai, are hereby quashed and set aside.

- ii. The Petitioners to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465, within four weeks from today.
- iii. The Respondent no.1 shall pay an amount of Rs.25,000/- (Rupees Twenty-five Thousand only) to the Mumbai Police Welfare Fund bearing Account No. 465010100008693, IFSC No. UTIB0000465, within four weeks from the date of the order.

18. Writ Petition is disposed of accordingly in the aforesaid terms.

19. All parties to act upon an authenticated copies of this order.

20. List the matter for compliance on 21st November 2025.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)