
(2021) 03 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No.850 Of 2021

Jesuwin Cherian And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 31-03-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 420

Citation : (2021) 03 BOM CK 0030

Hon'ble Judges : S. S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : Satyadev Joshi, Ravishekhar Pandey, Susmit Paradkar, Bastele Jhakday, A S Pai, Sanjeev P Kadam, Prashant P Raul

Final Decision : Disposed Of

Judgement

S S Shinde, J

1 Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2 The Petitioners have filed this Writ Petition for the following relief:-

(a) By an order of this Hon'ble Court, F.I.R. bearing No.0421/2020 registered with Turbhe MIDC Police Station, Navi Mumbai on 11/12/2020 under Sections 420, 406 and 34 of the Penal Code against the Petitioners be quashed and set aside with an immediate effect."

3 It appears from the perusal of the contents of the impugned FIR that dispute between the parties arose on account of commercial transaction for a deal of 50 lakhs 3 ply surgical masks. It is alleged by Respondent No.2 who lodged the impugned FIR on behalf of Respondent No.3 that Petitioner No.3 – M/s. Flagship Biotech International Pvt. Ltd. agreed to supply 50 lakhs masks at mutually agreed price and payment terms to Respondent No.3 – Mana Pharma. Accordingly Respondent No.3 confirmed the purchase order with Petitioner No.3

for a total consideration of Rs.9 Lakhs euros for 50 lakhs masks. It is alleged that Respondent No.3 made advance payment of 7,80,000 euros to Petitioner No.3. It is also alleged that it was expected from Petitioner No.3 to supply the masks to Respondent No.3 within 10 days of the said payment. However, the said first instalment of the masks did not reach to Respondent No.3. Respondent No.3 therefore made enquiry and persuaded the matter with Petitioner No.3, but there was no response from Petitioner No.3. It is the allegation of the Respondent No.3, though the Petitioner No.3 had sufficient stock with them, they did not supply the masks to Respondent No.3. Thereafter Respondent No.3 demanded the money back from Petitioner No.3 which was deposited by Respondent No.3 in the account of Petitioner No.3. However, Petitioner No.3 did not refund the money. Therefore the Respondent No.2 being the representative of Respondent No.3 lodge the F.I.R. bearing No.0421/2020 registered with Turbhe MIDC Police Station, Navi Mumbai on 11/12/2020 under Sections 420, 406 and 34 of the Penal Code against the Petitioners.

4 The learned counsel appearing for all the parties have jointly submitted that the parties have decided to amicably settle the disputes between them. The learned counsel appearing for the parties submit that the parties have voluntarily agreed to resolve their dispute which is basically commercial in nature, and there is no coercion, undue influence or force upon them for settling the said dispute. It is also submitted that in terms of the consent terms executed between the parties, the Respondent No.3 received total payment of 780000 euros as agreed towards the settlement.

5 It is submitted by the learned counsel for Respondent No. 3 that it is the voluntary act of Respondent No. 3 to arrive at settlement and give consent for quashing the impugned FIR.

6 This matter was on board on 24/03/2021 for hearing. At that time the 2nd Respondent – Girish Jaiswal, the representative of Respondent No.3, was present in the Court. He was identified by his advocate. When we interacted with him , he stated that in view of the payment of the total settlement amount by the Petitioners in favour of his company i.e. Respondent No.3 Mana Pharma, he does not have any complaint against the present Petitioner. He further stated that it is his voluntary act to give consent for quashing the impugned FIR.

7 The Respondent No.2 has filed his affidavit dated 15/03/2021 in support of his aforesaid statements. In paragraphs 1 to 6 of his affidavit, the 2nd Respondent has stated thus :-

"1 I have filed a Criminal Complaint against the present Petitioners for non-supply of Covid-19 Masks to the end consumers in Iran for which an amount of 780000 euros Contract was paid to the Petitioners. The Petitioners admit to the payment of the said amount. There were disagreements and disputes regarding the execution of the Agreement giving rise to the registration of Criminal Complaint vide C R No.I-421 of 2020 with Turbhe MIDC Police Station under

Section 420, 406 r/w 34 of the Indian Penal Code.

2 However, the Petitioners have agreed to execute Consent Terms with the Respondent Company and have made payments of 230000 Euros initially and had agreed to further transfer 230000 Euros as per the Schedule mentioned in the said Agreement. Furthermore, out of the total agreed amount of settlement of 780000 Euros the remaining amount was to be settled by the Petitioners in the form of exporting the products as per consent terms. Considering this approach, by consent the ABA filed by the Petitioners being ABA No.276/2021 was adjourned to 22/03/2021 with the consent of the parties.

3 I state that during pendency of the schedule referred above in the agreement between the parties, the Accused once again approached me and my company with the proposal that they would clear the total agreed amount of settlement 780000 Euros and would settle all the disputes. Accordingly, Mana Pharma has received a total payment of 780000 Euros as agreed towards the settlement amount of the disputes between the parties. Hence, as on today the Accused are not liable to pay any further amount to Mana Pharma nor are they required to perform any further obligations.

4 I state that I have no complaint of any nature against the Petitioners and I have no objection if the said complaint and the proceedings arising thereto filed against them are quashed and set aside.

5 I further state that in view of the payment of the total settlement amount by Accused in favour of Mana Pharma, the parties have amicably settled the matter and I do not have complaint against the present Petitioners. Similarly, the parties would place the present Affidavit before the Hon'ble Court dealing with Anticipatory Bail Application, in fact, if the FIR is quashed nothing would remain in the Anticipatory Bail Application.

6 I further state that accordingly I am giving my consent for quashing of the C.R. No.I-421 of 2020 registered with Turbhe MIDC Police Station and the proceedings arising thereto."

8 In view of the fact that the parties have decided to resolve/settle their dispute and by way of affidavit the 2nd Respondent has given no objection for quashing the impugned FIR and the proceedings arising out of the said FIR, no fruitful purpose will be served by continuing the further investigation of F.I.R. bearing No.0421/2020 registered with Turbhe MIDC Police Station, Navi Mumbai on 11/12/2020 under Sections 420, 406 and 34 of the Penal Code against the Petitioners.

9 The Supreme Court in the case of Giansingh v. State of Punjab and Another 2012 (10) SCC 303 has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony

relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

10 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 2 is not going to support the allegations made in the impugned FIR and prosecute the present Petitioners. The entire dispute arose out of commercial transactions. The further continuation of investigation in F.I.R. bearing No.0421/2020 registered with Turbhe MIDC Police Station, Navi Mumbai on 11/12/2020 under Sections 420, 406 and 34 of the Penal Code against the Petitioners and further continuation of the proceedings arising out of the said FIR, would tantamount to abuse of the process of the Court. Since the Respondent No. 2 by way of filing his affidavit has given no objection and consent for quashing the impugned FIR and the proceedings arising thereto, the chances of the conviction of the Petitioners would be remote and bleak.

11 It is pertinent to note at this stage that though the parties herein have agreed and decided to resolve/settle their dispute between them and approached this Court for quashing of the FIR lodged by the 2nd Respondent on behalf of Respondent No.3 against the Petitioners, we deem it appropriate to impose costs of Rs.1,00,000/- (Rupees One Lakh only) on Petitioner No.3 Company and costs of Rs.1,00,000/- (Rupees One Lakh only) on the 3rd Respondent Company. Accordingly we direct the Petitioner No.3 and Respondent No.3 to individually deposit costs of Rs.1,00,000/- (Rupees One Lakh only) each in the below mentioned account of the Police Welfare Fund:-

Name of Bank of Account : Police Welfare Fund

Bank Account No. : 914010029005759

Bank Name : Axis Bank Ltd.

Branch : Worli, Mumbai – 400 025.

IFS Code : UTIB0000060.

12 For the reasons stated herein above, and in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the impugned FIR is required to be quashed and set aside. The Writ Petition deserves to be allowed in terms of prayer clause (a) subject depositing the costs as stated herein above, which read thus :-

(a) By an order of this Hon'ble Court, F.I.R. bearing No.0421/2020 registered with Turbhe MIDC Police Station, Navi Mumbai on 11/12/2020 under Sections 420, 406 and 34 of the Penal Code against the Petitioners be quashed and set aside with an immediate effect."

13 The Petitioner No.3 and the Respondent No.3 shall deposit their respective costs within two weeks from today. Payment of aforesaid costs is a condition precedence for allowing these Writ Petition and this order will take effect after depositing the amount of costs by the Petitioner No.3 and the Respondent No.3.

14 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

15 List the Petition on 19/04/2021 under caption "For Compliance" of deposit of costs.