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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 589 OF 2015**

Mr.Bharat Narotam Doshi

Applicant

Versus

State of Maharashtra and anr

Respondent

Mr. Shirish Gupte alongwith Mr. Vishal Shriyan i/by M/s. Khaitan & Co. for the applicant.

Ms. V.S. Mhaispurkar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 23, 2015**

P.C.

Heard learned counsel for the applicant and learned A.P.P. for the State.

2. Criminal Application No. 15 of 2015 was withdrawn by the learned counsel for the applicant in view of the communication received from the Government that the Government was ready to withdraw the prosecution pending being Criminal Complaint No. 1305/SF/2014 in the court of 29th Court, Dadar. It is submitted by the learned counsel for the applicant that the Magistrate refused to allow the prosecution to be withdrawn by the learned A.P.P. A fresh communication received from the Government was also shown to the learned Magistrate. However, he was not inclined to allow the

withdrawal unless there is formal order of the Government for withdrawal of the prosecution.

3. Learned Magistrate failed to understand that the prosecution under section 321 of the Code of Criminal Procedure can be withdrawn by the P.P. or A.P.P. In my opinion, learned magistrate failed to realize that the A.P.P. represents the Government.

4. In view thereof, Criminal Application No. 15 of 2015 is restored to file and be listed for admission after one week. Learned A.P.P. appearing in the court of learned trial Magistrate shall make an application in writing for withdrawal of the prosecution if he is instructed by the department.

5. The learned Magistrate shall pass orders on the said application after hearing both the side.

6. If the learned Magistrate chooses to reject the application, he shall not proceed further with the Criminal Proceedings pending vide Criminal Complaint No.1305/SF/2014 until further orders of this court. Stand over to 7th August, 2015.

(JUDGE)