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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.685 OF 2015

IN

CRIMINAL APPLICATION NO.6 OF 2015

1. Sachin Dattu Nadhe
 2. Vicky Shambuling Sutar
 3. Ganesh Dinkar Nadhe
 - 4.
- ..Applicants.

V/s.

1. State of Maharashtra
 2. Deepak Ramesh Nadhe
- ..Respondents.

Mr.Balwant Salunkhe i/b. Subhash Huyalkar for the applicants.
Mrs.S.V.Sonavane, A.P.P. for the respondent-State.
Mr.S.S.Musale for respondent No.2.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 20TH AUGUST, 2015

P.C. :-

1. Heard learned counsel for the applicant and learned counsel for respondent. By order dated 3rd February, 2015, this Court allowed Criminal Application No.6 of 2015 in terms of prayer clause (A) thereby quashing the F.I.R. bearing C.R. No.132/14 registered with Wakad police station, Pune for the offences punishable under Sections 326, 435, 337, 504 read with 34 of the Indian Penal Code. The FIR was quashed by consent subject to the

applicant paying cost of Rs.10,000/- to respondent No.2, the original complainant.

2. The costs as contemplated by the order dated 3rd February, 2015 was not paid by the applicants. It was brought to our notice that the learned Judicial Magistrate First Class, Pimpri, Pune on the basis of an application filed by the applicants by order dated 7th February, 2015 acquitted the applicants. In these circumstances, we passed an order on 23rd April, 2015 and recalled the order dated 3rd February, 2015 and also called for a report from the learned Judicial Magistrate First Class.

3. The applicants by this application No.685 of 2015 seeks recall of the order dated 23rd April, 2015. Xerox copy of the demand draft in the name of the Registrar, Appellate Side, Bombay for Rs.10,000/- towards cost is annexed at Exhibit-D to the application. The learned 2nd Joint Judicial Magistrate First Class, Pimpri, Pune has submitted report dated 5th June, 2015 to the Registrar (Judicial-II), High Court, Bombay.

4. The report discloses that the Advocate for the applicants appeared before him and submitted that the matter is settled and the amount is paid to the complainant. The report further shows that in the subject F.I.R. charge-sheet was not filed. It is clear from the report that in the absence of any charge-sheet,

the learned Judicial Magistrate could not have acquitted the accused. The explanation however is given that due to heavy work and heavy remand work, the order of acquittal of the applicants came to be passed. The explanation is not satisfactory. The learned Judicial Magistrate should have acted cautiously. We hope that the learned Judicial Magistrate would not commit such mistakes hereinafter.

5. Since the applicants are ready with the demand draft of the cost to be paid to the respondent No.2, they are directed to deposit the same with the Registry by tomorrow. Respondent No.2 is allowed to withdraw the said amount of Rs.10,000/- on making proper application.

6. In the above circumstances, since the applicants are ready to comply with the directions regarding payment of cost, we recall the order dated 23rd April, 2015 and restore the order dated 3rd February, 2015.

7. The application stands disposed of.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)