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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

**CRIMINAL APPLICATION NO. 536 OF 2014
IN
CRIMINAL WRIT PETITION NO. 2439 OF 2013**

Ms. Dakshata Shet. ... Applicant.

V/s.

Matushree Infrastructure Pvt. Ltd. ... Respondents.

Ms. Dakshata Shet, Applicant-in-person.
Mrs. S.D. Shinde, APP for the State.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

JANUARY 14, 2015.

P.C. :-

Since Respondent No.1 to this Application, Respondent No.3 to this Application, Respondent No.5 to this Application and Respondent No.6 to this Application were not Respondents in the Writ Petition, no notice of this Application is being issued to these Respondents.

2. This Application has been submitted by the Applicant, who was Petitioner in Writ Petition No.2439 of 2013. When this Petition was on board on 14.10.2014, a report came

to be submitted by the Investigating Officer dated 26.8.2014 which was marked 'X' for the purpose of identification. On the basis of the said report it was urged before us on behalf of the Respondents that the complaint filed by the Petitioner/present Applicant had been duly inquired into and thereafter, a 'C' Summary had been submitted before the Metropolitan Magistrate, 27th Court, Mumbai.

3. In the light of the aforesaid statement therefore, the Petitioner rightly chose to withdraw the Petition with liberty to contest the 'C' Summary which was filed by the Investigating Officer before the Magistrate. This Court further granted liberty to the Petitioner to file appropriate proceedings in the event the Petitioner was aggrieved by the order which may be passed by the Magistrate. The Petition was thus dismissed as withdrawn with the liberty as pointed out by us above.

4. In the present Application and in the affidavit which has been tendered before us by the Petitioner, it is pointed out to us that the complaint filed by the Petitioner was never registered and no offence was registered on the basis of the

complaint of the Petitioner. The complaint of the Petitioner was never inquired into and consequently, no Summary had been submitted before the Magistrate in respect of the complaint of the Petitioner. It is now contended on behalf of the Respondents that a similar complaint had been inquired into and in that complaint a 'C' Summary had been submitted. The statement which was made before us to say the least was an incorrect statement which persuaded the Petitioner to withdraw the Petition. We cannot countenance such incorrect statement being made on behalf of the Respondents and therefore, we recall our order dated 14.10.2014 permitting the Petitioner to withdraw the Petition and restore the Petition to file subject to costs of Rs.5,000/- being paid by Respondent No.2. The Petition, therefore, now stands restored to file. The Petition therefore now be placed before the bench assigned with hearing and deciding the Writ Petition.

5. Criminal Application allowed subject to costs of Rs.5,000/- as indicated by us.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)