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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1229 OF 2016

Abdul Aleem Athania and Anr.

..Petitioners.

V/s.

The State of Maharashtra and Anr.

..Respondents.

Mr.Fakhruddin Khan for the petitioners.

Mr.J.P. Yagnik, APP for the respondent-State.

Ms. Pragati P. Salpe for respondent No.2.

**CORAM : NARESH H.PATIL AND
A.M.BADAR, JJ.**

DATED : 2ND MAY, 2016

P.C. :-

1. By this petition, petitioners / accused are praying for quashing and setting aside the charge-sheet and the resultant Criminal Case No.507/PW/2015 pending on the file of 66th Metropolitan Magistrate, Andheri, Mumbai for the offence punishable under section 420 read with 34 of the Indian Penal Code at the instance of respondent No.2 / informant Yaseen Abdul Goga.

2. Learned counsel for petitioners / accused as well as respondent No.2 / informant unanimously submit that the

dispute between the parties is predominantly of civil nature and the same is settled by the parties. They submit that now the sale deed of the room is registered by the petitioners in favour of respondent No.2 on receipt of the entire consideration and, therefore, the F.I.R. in question and the resultant criminal case needs to be quashed and set aside.

3. We have also heard the learned APP for the State.

4. Perusal of the F.I.R. goes to show that according to the informant though she has paid the entire consideration of room No.701/B to the petitioners, the sale deed thereof was not executed in his favour by petitioners / accused. Now, the deed of transfer is reported to be executed by the parties. Respondent No.2 / informant has tendered an affidavit submitting that he has got the possession of the flat, so also the original documents of transfer in the name of Mrs.Asma Asif Goga. By filing this affidavit, respondent No.2 / informant is also seeking quashing of the F.I.R.

5. Respondent No.2 / informant Yaseen Abdul Goga is present before the Court. He is duly identified by his counsel. Upon being asked, he submits that he does not want to prosecute the criminal case registered against petitioners at

his instance. As offence alleged is predominantly of civil nature, we are of the opinion that the F.I.R. so also the criminal case against petitioners needs to be quashed. However, at the same time as the police machinery and the Court machinery were put in motion by the parties to settle their private dispute, we find it appropriate to saddle petitioners / accused with costs of Rs.25,000/-. We direct petitioners to deposit this amount with the Police Welfare Fund, Mumbai and to produce a receipt thereof by 7th June, 2016 as condition for quashing the criminal case pending against them. Hence the order :-

- (i) Subject to payment of Rs.25,000/- by petitioners with the Police Welfare Fund, Mumbai by 7th June, 2016, the F.I.R. No.316/2014 for the offence punishable under section 420 read with 34 of the Indian Penal Code registered with Amboli Police Station, Mumbai at the instance of respondent No.2 / informant Yaseen Abdul Goga and the resultant Criminal Case No.507/PW/2015 pending on the file of 66th Metropolitan Magistrate Court, Andheri, Mumbai, the petition is quashed and set aside.
- (ii) Registry to verify compliance of the order.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)