

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3913 OF 2015**

Dr. Anwar Mohammed Shaikh & Anr.

..... Petitioners.

V/s

State of Maharashtra & Anr.

..... Respondents

Mr. M.A. Khan for the Petitioners.

Dr. F.R. Shaikh, APP for Respondent No.1/State.

Mr. Vikram Sutaria i/b Prateek Rach for Respondent No.2.

**CORAM: V. M. KANADE &
Ms. NUTAN D. SARDESSAI, JJ.**

DATE: 21st December, 2016

P.C.:-

1] Heard the learned Counsel appearing on behalf of the Petitioners, learned Counsel for Respondent No.2 and the learned APP appearing on behalf of the State.

2] Petitioners have filed this Petition for quashing the criminal complaint filed by Respondent No.2 for the offence punishable under sections 420, 465, 467, 468 and 34 of the Indian Penal Code.

3] Brief facts are that the Petitioners claim to have entered into Memorandum of Understanding (“MOU”) with Respondent No.2 for the purchase of Flat at Bandra for a sum of Rs 1 crore. According to

the Petitioners, a sum of Rs 5 lakhs was paid at the time of execution of MOU as earnest money and an amount of Rs 85 lakhs was to be paid on 28/3/2009. The balance consideration of Rs 10 lakhs was to be paid on completion of sale. According to the Petitioners, Respondent No.2 had mortgaged the flat with Bank of Maharashtra and she has informed them that the said amount had been repaid by her. According to Respondent No.2, this amount was to be paid by the Petitioners. Subsequently, the agreement for transfer of flat was executed which was duly registered with the office of Sub-Registrar of Assurances. According to Respondent No.2, this document is forged and fabricated and the receipt which is annexed to the said agreement is forged.

4] The learned Counsel appearing on behalf of the Petitioners has taken us through various documents which are annexed to the Petition. It is submitted that Respondent No.2 has suppressed facts from the Petitioners and has filed criminal complaint only after the Petitioners filed suit in the City Civil Court. It is submitted that Petitioners have paid an amount of Rs 85 lakhs over and above the sale consideration of Rs 1 crore and the said amount has been deposited during the DRT proceedings which were initiated by the Bank.

5] The learned Counsel appearing on behalf of Respondent No.2, on the other hand, submitted that the said document is forged. In

support of the said submission, he has relied on other documents which are annexed to the affidavit-in-reply.

6] Mr. Shaikh, the learned APP appearing on behalf of the State has shown us Police Report in which it is said that the the signature of Respondent No.2 on the Deed of Transfer is forged.

7] Taking into consideration all these facts, we are of the view that at the stage of quashing of FIR and charge-sheet, it will not be possible for this Court to consider all these documents which have been produced by either parties. We are therefore not inclined to interfere and quash the FIR which is filed against the Petitioners.

8] Petition is dismissed. All contentions of Petitioners and Respondent No.2 are kept open. Dismissal of Petition shall not be construed to mean that we have expressed any opinion on the merits of the case.

9] Petition is accordingly disposed of.

(Ms. NUTAN D. SARDESSAI, J.)

(V.M. KANADE, J.)