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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4114 OF 2014

Smt. Nalini Sujan

..Petitioner.

V/s.

The State of Maharashtra and Anr.

..Respondents.

Mr.Nikhil Rajani i/b. M/s. V.Deshpande & Co. for the petitioner.

Mrs.S.D.Shinde, APP for the respondent-State.

Mr.S.A.Bhagwat for respondent No.2

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

DATED : 22ND MARCH, 2016

P.C. :-

1. By this petition under Article 226 and 227 of Constitution of India read with Article 482 of the Code of Criminal Procedure Code, 1973, the petitioner has prayed for quashing and setting aside F.I.R. bearing MECR No.4/2014 for offence punishable under sections 406 and 420 read with 34 of the Indian Penal Code, 1860 registered against the petitioner at the instance of respondent No.2 Dwarkadas

Gangadas Panchmatia with Malad police station, Mumbai.

2. Briefly stated, it is the prosecution case that the present petitioner had cheated respondent No.2 by inducing him to clear off the bank loan of the petitioner, so also by other acts and thereby committed breach of trust and cheated respondent No.2 / complainant Dwarkadas Panchamatia.

3. Heard learned counsel appearing for the petitioner / accused as well as learned counsel appearing for respondent No.2 / complainant. Our attention is drawn to the consent terms between the parties entered into during the pendency of the suit bearing No.2868 of 2009 before this Court. As per clause 8 of the consent terms, respondent No.2 / complainant had agreed to withdraw criminal complaint filed against the present petitioner and to give consent for quashing the same in this writ petition. Accordingly, respondent No.2 has placed on record his affidavit stating that he has no objection for quashing the F.I.R. in question. Learned counsel appearing for both the parties submitted that dispute between the parties is completely settled and they do not wish to prosecute the criminal proceedings. Respondent No.2/complainant is present

before the Court duly identified by his learned counsel. Upon being asked, respondent No.2 Dwarkadas Panchmatia has stated that the matter is settled outside the Court and, therefore, he does not wish to prosecute / pursue the prosecution launched at his instance.

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

5. The dispute between the petitioner and respondent No.2 is a private dispute having no public law involved. According to respondent No.2 / complainant, the petitioner committed breach of trust and cheated him. The transaction between the parties has also resulted in filing of a suit and that suit is also disposed of in view of the consent terms filed by the parties. As such, we are of the considered opinion that continuation of criminal proceedings against the petitioner would be a futile exercise. The transaction entered into between the parties is predominantly of civil character. In the result, this is a fit case to exercise extra-ordinary powers of this Court under Article 226 of the Constitution of India. Hence the order.

a) The petition is allowed. The F.I.R. bearing MECR No. 4/2014 against the petitioner lodged at the instance of respondent No.2 / complainant for offence punishable under section 406, 420 read with 34 of the Indian Penal Code, 1860 with Malad police station, Mumbai is hereby quashed and set aside.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)