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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.222 OF 2017**

Mrs. Shamim Bano Modak and Anr.	... Petitioners
Vs.	
State of Maharashtra and Anr.	... Respondents

Mr. Prajot H. Jaggi for the Petitioners.
Mr. K.V. Saste, APP for the Respondent No.1.
Mr. Dharmesh S. Joshi for the Respondent No.2.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 6th MARCH, 2017

PC.

1 Rule. The learned APP waives service for the first respondent and the learned counsel appearing for the second respondent waives service. Forthwith taken up for final disposal.

2 The prayer made in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is for quashing the FIR registered on the basis of an order made under Sub-Section (3) of Section 156 of the Code of Criminal Procedure, 1973. The prayer for quashing is sought on the ground of amicable settlement between the petitioners and the second respondent.

3 According to the statement of the second respondent, on the basis of which the FIR was filed, the second respondent was looking for a residential premises in Mumbai. The allegation is that the second petitioner was carrying on business of estate agent. An advertisement was published that a flat owned by the first applicant was available on rent. It is alleged that after negotiations, the second respondent and her husband collected various amounts from their relatives and total amount of Rs.20 lakhs was paid to the first applicant by way of deposit. It is alleged that the petitioners avoided to execute a document of lease. Thereafter, an offer was given by the petitioners to the second respondent for selling the said flat. It is alleged in the statement that the flat was neither given on ownership basis nor on rental basis. It is alleged that though the petitioners were aware that proceedings in respect of the said flat were pending in the City Civil Court and this Court, assurances were given to the second respondent by inducing her to pay various amounts. Allegation is that the second respondent was deceived.

4 There is an affidavit filed by the constituted attorney of the second respondent to which the photo copy of the power of attorney executed by the second respondent has been annexed. The constituted

attorney of the second respondent is her mother in law. The affidavit records that the petitioners have re-paid the sum of Rs.20 Lakhs by Demand Draft dated 18th October, 2016 drawn on ICICI Bank. It is also stated that said amount has been credited in the account of the second respondent with Kotak Mahindra Bank on 25th October, 2016. In view of the settlement, the constituted attorney of the second respondent stated that the second respondent does not wish to proceed with the prosecution.

5 There is a report submitted to the learned APP by the Senior Inspector of Police, Kurla Police Station who confirmed the fact that the second respondent has received a sum of Rs.20 Lakhs.

6 The dispute as reflected from the FIR has predominantly a civil flavour. In fact, the is dispute over a transaction of lease/sale of a flat. Now, there is a commercial settlement between the parties. Hence, no purpose will be served by continuing the prosecution where chances of conviction are very bleak. As the second respondent has set the criminal law in motion on the basis of a dispute having predominantly a civil flavour, we were proposing to impose costs. However, a sum of Rs.25,000/- has been paid by way of a donation by the second respondent to the Mumbai Police Welfare Fund. A receipt issued is produced for perusal of the Court.

7 Accordingly, the Petition must succeed and we pass the following order :-

ORDER

(i) Rule is made absolute in terms of prayer clause (b) which reads thus :-

“(b) That after examining the legality, validity and/or propriety of the said F.I.R., this Hon'ble Court be pleased to quash and set aside the F.I.R., this Hon'ble Court bearing MCER no.3 of 2016 of Kurla Police Station on such terms and conditions as this Hon'ble Court may deem fit and proper.”

(ii) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)