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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3338 OF 2014**

Muralidhar T. Tilwani	... Petitioner
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. Prashant P. Kulkarni i/by Mr. Abhijeet B. Desai for the Petitioner.
Mr. K.V. Saste, APP for the Respondent No.1.
Mr. Mirza Abdul Hasan Abdul, Respondent No.2 in person.

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

DATE : 21st MARCH, 2017

PC.

1 Rule. The learned APP waives service for the first respondent. The second respondent appears in person who takes the notice. Shri. S.G. Sankpal, PSI, Kurla Police Station is present in the Court who identified the person present in the Court to be second respondent. The second respondent has tendered an affidavit affirmed before the Assistant Registrar of this Court. The affidavit records that original Pan Card of the second respondent was seen and verified by the Assistant Registrar before affirmation.

2 The second respondent is the first informant at whose instance the impugned FIR was registered alleging commission of

offence under Section 506(ii), 323 read with section 34 of the Indian Penal Code as well as Section 30 read with Section 25 of the Arms Act. The present petitioner filed Criminal Writ Petition No.1331 of 2005 for quashing the same FIR on the basis of settlement. By order dated 5th May, 2005, the learned Single Judge allowed the Petition. Relevant part of the said order read thus :-

- “1. The petitioners have filed this petition for quashing FIR No.232 of 2003 which was filed against him by the respondent No.2. It is submitted that both parties have settled the matter out of the court and the complainant has withdrawn the criminal complaint which had filed in the trial court. However FIR has not been quashed. The respondent No.2 has also filed an affidavit in which he has stated that he does not wish to pursue the said FIR prosecuting the present petitioner. It is stated that the disputes between the parties have been resolved. In view of affidavit in reply filed by the respondent No.2 and consent of the learned counsel on instructions given by his client who is present in the court that he has no objection if the FIR is quashed the FIR lodged by the respondent No.2 being FIR No.232 of 2003 under sections 506(ii), 323 and 341 of the Indian Penal Code is quashed and set aside. The writ petition is allowed in above terms.”

3 Criminal Application No.77 of 2013 was filed by the Petitioner before the same learned Single Judge for modification of the said order. It was contended therein that though there was consent granted based on settlement to quash all the offences, in the operative part of the order dated 5th May, 2005 which we have quoted above, there was no reference to the offences under the Arms Act. By order

dated 14th April, 2014 the learned Single Judge rejected the said application by making the following order :-

“2. It is not possible to accept the said submissions made by the learned counsel appearing on behalf of the Applicant. The said order was passed on 5.5.2005, more than nine years have passed and, therefore, it is not possible to modify the said order. The Petitioner may, however, file a fresh application for quashing the offences punishable under the Arms Act. If such an application is filed, the same shall be heard by the Regular Court. Criminal Application is disposed of.”

4 The petitioner is relying upon the Memorandum of Understanding dated 19th July, 2002 executed by him. The said Memorandum of Understanding is signed by the second respondent and the petitioner. The Memorandum records that the second respondent and others received a sum of Rs.3,51,000/- from the petitioner. The second respondent and two others have been described as vendors under the said agreement. The agreement provides that they shall transfer the property subject matter of the agreement to the purchasers including the first petitioner.

5 Perusal of the order dated 5th May, 2005 shows that in fact the second respondent (first informant) had agreed for quashing of the FIR in its entirety. That is the stand taken today by the second respondent in his affidavit.

6 Therefore, this is a fit case to exercise power under Section
482 of the Code of Criminal Procedure, 1973.

7 The order dated 5th May, 2005 does not record that the
learned Judge was not inclined to quash the offences punishable under
the Arms Act.

8 Therefore, this Petition must succeed and we pass the
following order :-

ORDER

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

“(a) That the Writ of Certiorari or any other writ
or order or direction in the nature of certiorari be
issued and Case registered No.232 of 2003
registered with Kurla Police Station be quashed and
set aside the section 25, 30 of Arms Act.”

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

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)