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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.461 OF 2017

Kamal Malhari Sadafule	...Petitioner
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.L.M.Shukla, for the Petitioner.

Mr.Vinod Chate, A.P.P for the Respondent No.1-State.

Ms.D.T.Chimane, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd JANUARY, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 20th July, 2015, passed by the learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai, by which the petitioner's application (Exhibit – 14) was rejected.

3. Learned Counsel for the petitioner submits that before the application (Exhibit – 1) came to be decided by the learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai, the respondent No.2 herein had sold the flat i.e. Flat No.302, 'B' Wing, Sunrise Arcade, 3rd Floor, Sector 6, Kamothe, Navi Mumbai. He submitted that hence, the petitioner again filed an application (Exhibit – 14) and prayed that the trial Court should restrain the respondent no.2 from selling the property i.e. Flat No.103, 1st Floor, Raj Residency, Karanjale, Panvel. According to the petitioner, the said flat was purchased from the sale proceeds of the property i.e. Flat No.302, 'B' Wing, Sunrise Arcade, 3rd Floor, Sector 6, Kamothe, Navi Mumbai.

4. Learned Counsel for the Respondent No.2 submits that the said flat being Flat No.103, 1st Floor, Raj Residency, Karanjale, Panvel, belongs exclusively to her son and that her name is mentioned as a second holder. She refutes the submission that the aforesaid flat was purchased from the sale proceeds of the property i.e. Flat No.302, 'B' Wing, Sunrise Arcade, 3rd Floor, Sector 6, Kamothe, Navi Mumbai. Learned Counsel for the respondent no.2 states that the said flat i.e. Flat No.103, 1st Floor, Raj

Residency, Karanjale, Panvel, does not belong to the petitioner and is not a shared household and that her son has purchased the said property from his own income after obtaining loan and that he is paying EMI's. She, however, states that respondent no.2 is residing in the said flat and as such, she does not intend to sell the said flat.

5. It is informed that the trial has proceeded and the petitioner is in the witness box facing cross examination. Without going into the rival submissions advanced by the parties, with respect to the Flat No.103, 1st Floor, Raj Residency, Karanjale, Panvel, as the case is *sub judice* before the trial Court, it will be appropriate to dispose of the petition without going into the merits, in view of the statement made by the learned counsel for the respondent no.2 that she does not intend to sell the said flat. The said statement is made by the learned counsel for the respondent no.2 without prejudice to the rights and contentions of respondent no.2.

6. In view of the aforesaid statement made by the learned counsel for the respondent no.2, learned counsel for the petitioner does not press this petition.

7. The petition is accordingly disposed of as not pressed.
8. All contentions of the parties are kept open.

REVATI MOHITE DERE, J.