

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

CRIMINAL APPLICATION NO.226 OF 2019

Jayesh Tokershi Shah ..Applicant

V/s.

The State of Maharashtra & Anr. ..Respondents

Mr.S.S. Karmarkar I/b Karmarkar and Associates for the Applicant.

Mrs.A.S. Pai, APP for the Respondent-State.

Mr.Bharat Manghani a/w Ms.Hetal Jobanputra for Respondent No.2.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 14th JUNE 2019

P.C.

1. The present criminal application was taken out for quashing of the First Information Report bearing C.R. No.351 of 2018 lodged with Kandivali Police Station for an offence punishable under Sections 406 and 420 of the Indian Penal Code read with Sections 4 & 8 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA" Act)

2. In the complaint it is alleged that the complainant had booked a flat in project belonging to the accused in Ekta Nagar,

Kandivali (W), Mumbai for a total consideration of Rs.67,32,000/- and on a further stipulation that he will pay an additional sum of Rs.5,00,000/- towards parking charges. The flat was to be handed over within a period of 2 years from the date of booking. It is the case of the complainant that he paid an amount of Rs.18,88,096/- towards earnest money, first installment and the parking charges. However, the project remain to be completed and the allegation is that he only demanded the money back. The applicant paid a sum of Rs.3,00,000/- out of Rs.18,88,096/- and an amount of Rs.15,88,096/- remain to be paid. He further alleged that the applicant has committed an offence under Sections 420 and 406 made out along with the provisions of the MOFA Act.

3. It is to be noted that on 01.08.2018 in Anticipatory Bail Application referred by the applicant while the relief came to be granted it was directed that the applicant to deposit an amount of Rs.15,88,096/- in the Registry of this Court within a period of two weeks. This amount is deposited in this Court.

4. During the pendency of the present proceedings the parties have amicably resolved differences between them and in furtherance of the said understanding the respondent No.2 has filed

an affidavit dated 03.06.2019 before this Court. The affidavit specifically states that the dispute between the parties is settled on the condition that the complainant will be allowed to withdraw deposited amount of Rs.15,88,096/- which lies in the Registry of this court. The Complainant gives no objection for quashing of the FIR on this stipulation and condition. The complainant is present in the Court and he submits that he has no objection to quash the FIR subject to the said stipulation mentioned by him in paragraph No.8 of the affidavit.

5. We have perused the affidavit and on perusal thereof we are of the view that the dispute between the parties is clearly personal in nature and do not affect public interest. In such circumstances, keeping the proceedings pending and prosecution of the FIR further would lead to an abuse of process of law and in such circumstances, we are inclined to quash the FIR bearing C.R. No.351 of 2018 registered with Kandivali Police Station.

6. We direct the Registry to permit the complainant to withdraw an amount of Rs.15,88,096/- deposited in this Court in terms of the order passed by this Court on 01.08.2018.

7. With the aforesaid direction the quash the FIR bearing C.R. No.351 of 2018 lodged with Kandivali Police Station subject to the aforesaid stipulation and also subject to the cost of Rs.20,000/- to be paid by the applicant to Tata Memorial Hospital, Mumbai within a period of four weeks and produce the receipt thereof within six weeks.

8. Parties to act upon the authenticated copy of this order.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)