

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

CRIMINAL WRIT PETITION NO. 2966 OF 2018

Kaustubh Hemant Desai & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Manoj Badgujar for Petitioners.

Ms. S. D. Shinde, APP for State/Respondent No.1.

Ms. Anusha Amin for Respondent No.2.

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 21 DECEMBER 2021

P.C. :

. Heard the learned counsel for the parties. Taken up for disposal.

2. The Writ Petition is filed for the following relief:

“a) This Hon’ble Court be pleased to call for record and proceeding pertaining to C.R. No. 1 – 8 of 2016 registered with Kopari Police Station, Thane and further be pleased to quash and set aside R.C.C.No.260 of 2017 from the file of Ld. Judicial Magistrate First Class, Thane.”

3. The Respondent No.2 filed a complaint which was

considered by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure and the F.I.R. was lodged. The Respondent No.2 alleged that he was in search of a flat in Mulund area. The Petitioner No.5 represented himself as Director of Maharashtra Housing and Area Development Authority and that he can arrange one flat for the Respondent No.2. According to the Respondent No.2 the Petitioner No.5 showed Respondent No.2 some flats, pursuant to which the Respondent No.2 gave Rupees Two Lakhs and thereafter Rupees Five Lakhs to the Petitioners. However, the Respondent No.2 did not get any allotment letter. The Petitioner No.5 gave a cheque of Rupees Five Lakh to the Respondent No.2 which was dishonoured. On the allegation that the Respondent No.2 was deceived in this manner and money was not returned, the F.I.R. was lodged.

4. The learned counsel for the Petitioners and the learned counsel for the Respondent No.2 states that they have resolved their dispute on monetary terms and the Respondent No.2 has given consent to quash the F.I.R. The Respondent No.2 has filed an Affidavit and the learned counsel for the Respondent No.2 reiterates the contents in the affidavit, on instructions.

5. The Petition had come up on board on 2 December 2021. It was adjourned for the learned APP to take instructions whether there are any antecedents against the Petitioners and whether

there are any other victims. The learned APP, on instructions, states that there are no antecedents neither there are similar victims.

6. The learned counsel for the Petitioners has also drawn our attention to the orders dated 31 March 2017 and 22 June 2017 in the Anticipatory Bail Application No.1689 of 2016 filed by the Petitioners, wherein, the statement of the Petitioners that amount of rupees Two Lakhs has been returned and that rupees Five Lakhs would be deposited in the Court was recorded. Thereupon, after deposit of rupees Five lakhs the Anticipatory bail was granted.

7. The learned counsel for the Petitioners and the learned counsel for the Respondent No.2 states that they have agreed that the Respondent No.2 can withdraw the amount of rupees Five lakhs.

8. Considering the contents of the F.I.R., it appears that the dispute that led to filing of F.I.R. is of civil nature where agreement has not been honored and money was not paid. Now that parties have settled the dispute on monetary terms, there will be no purpose keeping the prosecution pending. Considering the stand taken by the Respondent No.2, same will not result in any conviction. Since there are no antecedents or any victims, this dispute is purely a personal one and does not have repercussion on the society at large. In the light of this position, the case is made out for exercise of extraordinary jurisdiction of this Court.

9. The Writ Petition is accordingly allowed in terms of prayer clause (a) as above.

10. In the light of statement made by the learned counsel for the Petitioners regarding amount of rupees Five Lakhs, the Respondent No.2 is permitted to withdraw amount of rupees Five Lakhs deposited by the Petitioners in this court, with accrued interest thereon.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)