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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3557OF 2023

Nisar Abdul Kazi and Anr.

.. Petitioners

vs.

State of Maharashtra and Anr.

.. Respondents

Mr. Rizwan Merchant a/w. Mr. Ramiz Shaikh a/w. Rishi Bindra i/by Rizwan Merchant & Associates for Petitioner No.1

Mr. Avinash D. Kamkhedkar, APP for Respondent No.1-State

Mr. Saiyed Sahil M. Nagamiya for Respondent No.2

PSI Madan Waghmare, Khar Police Station, Mumbai

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 25th OCTOBER, 2023.

P. C.:-

1) Petitioners accused in CC No. 525/PW/2020, pending on the file of Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, arising out of C.R. No. 854 of 2019 registered with Khar Police Station, Mumbai under Sections 406, 420 r/w. 34 of Indian Penal Code and under Section 8 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) have invoked jurisdiction of this Court under Article 226 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure for quashing of the said crime with the consent of Respondent No.2, the

informant.

2) Mr.Merchant, learned counsel appearing for the Petitioners submitted that, after the police submitted chargesheet, the parties herein have arrived at an amicable settlement and have executed Minutes of Order dated 10th October, 2023 in Writ Petition (St) No.5337 of 2023 filed on the Original Side of this Court. He submitted that, present Petition is filed in furtherance of the said settlement arrived at between the parties. Mr. Merchant tendered across the bar a photocopy of the cheque of Rs. 70,32,000 drawn on Union Bank of India dated 3rd November, 2023 in favour of Bandra Moonstar Cooperative Housing Society Ltd., represented by Respondent No.2. He on instructions submitted that, the Petitioners will abide by the terms of settlement, more particularly mentioned in the Minutes of Order and recorded by the Coordinate Bench in its Order dated 13th October, 2023. The said statement is accepted. He, therefore, prayed that, the crime in question may be quashed.

3) Learned Advocate for Respondent No.2 submitted that, he has filed an Affidavit dated 13th October, 2023, duly affirmed before a Notary Public. In the Affidavit, Respondent No.2 has admitted of amicable settlement and the Minutes of Order dated 10th October, 2023. In para No.3 of Affidavit, Respondent No.2 has given his no objection for quashing of the crime in

question.

Respondent No.2 is personally present in the Court and through his Advocate reiterates the contents of his Affidavit dated 13th October, 2023 and his 'no objection' to quash the crime in question.

4) In view thereof, we are inclined to quash CC No. 525/PW/2020, pending on the file of Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, arising out of C.R. No. 854 of 2019 registered with Khar Police Station, Mumbai.

5) As we expressed our opinion for quashing of said CC No. 525/PW/2020, pending on the file of Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, arising out of C.R. No. 854 of 2019 registered with Khar Police Station, Mumbai, Mr. Merchant learned Advocate for the Petitioners, on instructions, submitted that, the Petitioners will pay a cost of Rs.1,00,000/- each totalling to Rs.2,00,000/- to Advocates' Association of Western India Generation Next Fund, Mumbai within a period of two weeks from the date of uploading of the order. The said statement is accepted as an undertaking to this Court.

6) We direct the Petitioners to pay a cost of Rs.1,00,000/- each totalling to Rs.2,00,000/- to Advocates' Association of Western India Generation Next Fund, Mumbai within a period of two weeks from the date of uploading of

the present Order on the official website of Bombay High Court.

6.1) The details of the bank Account for payment of cost are as under:-

Account Name	:-	Advocates' Association of Western India Generation Next.
Account Number	:-	000110110007807
Bank Name	:-	Bank of India
Branch Name	:-	Mumbai Main
IFSC Code	:-	BKID0000001

7) The Petitioners to deposit the said cost of Rs.2,00,000/- within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

8) In view of above and subject to payment of cost, Petition is allowed in terms of prayer clause (a).

9) It is made clear that, if the cost is not paid within stipulated period as mentioned above, the Petition shall stand revived automatically and in that event, the trial Court will proceed with the said case expeditiously.

10) List the Petition on 30th November, 2023 under the caption '*for reporting compliance*' of Order.

12) All the concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)