

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4484 OF 2024

Mr. Edwyn Jerry D'Mello

.....Petitioner

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Mohan B. Jadhav, i/b Adv. I. Isma, for the Petitioner.

Smt. M.H. Mhatre, APP for Respondent No.1-State.

Mr. Harshal Suryawanshi, with Adv. Mohd. Riyaz, for Respondent No.2.

CORAM : SARANG V. KOTWAL AND

DR. NEELA GOKHALE, JJ.

DATE : 18th OCTOBER 2024.

P.C.:-

1) The Petition is filed for quashing of the FIR registered vide C.R.No.120 of 2023 (CCTNS No. 186/2023) at Nehru Nagar Police Station, Mumbai for the offences punishable under Sections 406, 420, 500 of the Indian Penal Code, 1860 ('IPC') and Sections 5, 8 and 13 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. Investigation is over and the consequent criminal proceeding is pending vide R.C.C. No.2438/PW/2023 before the 34th Judicial Magistrate First Class, Vikroli. Prayer is for quashing the entire case.

2) We have heard the parties. Advocate Mr. Harshal

Suryawanshi appears and states that he has instructions to appear for the Respondent No.2, who is the Original First Informant. He undertakes to file his vakalatnama within a period of two weeks from today. FIR is lodged by the Respondent No.2.

3) The gist of the FIR is that the Petitioner had promised to give a two BHK flat in the building known as Midas Bhumi Harmony at Nehru Nagar, Mumbai. For that purpose, the price was quoted at Rs.44,20,000/-, out of which the First Informant paid Rs.14,00,000/- through cheques and Rs.27,20,000/- in cash. Thus, he paid in all Rs.41,20,000/-. This payment was made from time to time between January 2009 upto August 2014. However, thereafter neither the flat was given nor the money was refunded to the First Informant and, therefore, the FIR was lodged on 4th April 2023. Investigation was carried out, the charge-sheet is filed and the case is pending before the Magistrate as stated above.

4) Now the matter is settled between the parties. The First Informant has filed Civil Suit bearing No.101388 of 2023 before the City Civil Court, Bombay against the Applicant's company, which are the developers. In that suit, the Consent Terms dated 20th April 2024 were entered into pursuant to which the First Informant had

undertaken to withdraw the FIR No.120 of 2023 (CCTNS No. 186/2023) dated 4th April 2023 registered at Nehru Nagar Police Station, Mumbai. Today an Affidavit dated 18th October 2024 is filed in the Court affirmed by the First Informant, i.e., the Respondent No.2 herein, before the Assistant Registrar of this Court. In that Affidavit, it is specifically mentioned that he has no objection for dropping of the criminal proceeding bearing R.C.C.No. 2438/PW/2023 arising out of F.I.R. 120 of 2023 registered at Nehru Nagar Police Station. Informant/Respondent No.2 is present in the Court. He is identified by his counsel. He admits that the dispute is resolved and he has no objection for quashing of the criminal proceeding. Dispute between the parties is purely personal in nature. Informant is given another flat by the Petitioner and the grievance of the First Informant does not survive. The learned APP on instructions states that investigation has not revealed that there are any other victims. Considering this situation, the Petition is allowed. Hence, the following order:

ORDER

(i) C.R.No.120 of 2023 (CCTNS No. 186/2023) registered at Nehru Nagar Police Station, Mumbai resulting in R.C.C. No.2438/PW/2023 pending before the 34th Judicial Magistrate First

Class, Vikroli are quashed and set aside.

5) Petition is disposed of.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

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