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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3985 OF 2024****Jitendra Shankarlal Brahmbhatt & Anr. Petitioners****VERSUS****The State of Maharashtra & Ors. Respondents****ALONGWITH
INTERIM APPLICATION (ST) NO. 2251 OF 2025
IN
CRIMINAL WRIT PETITION NO. 3985 OF 2024****Romulus Raul Pereira Intervenor****IN THE MATTER OF****Jitendra Shankarlal Brahmbhatt & Anr. Petitioners****VERSUS****The State of Maharashtra & Ors. Respondents**

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Mr.Arshad Shaikh, Senior Advocate a/w. Ms.Namrata A. Agashe, Ms.Vinsha Acharya, Mr. Pranil Lahigade, Mr. Aniket Pardeshi i/b. Mr. Rajendra Jain for the Petitioners.

Mr. Vishal Hegde a/w. Ms. Aishwarya Jose, Ms. Pranita Dhumak, Ms.Anuja Apte for the Intervener.

Mr. Aditya Sharma a/w. Mr. B. Mohamedi i/b. M/s. Bellatol Legal Services for the Respondent No.3.

Mr. A. A. Palkar, A.P.P. for the State.

Mr. Rajendra Shivade, API, Unit No. 10, EOW, Mumbai.

Mr. P. B. Sunoshe, API, Goregaon Police Station, Mumbai.

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**CORAM : RAVINDRA V. GHUGE AND
RAJESH S. PATIL, JJ.**

DATE : 23rd January, 2025

P.C. :

1. This Petition is with regard to the FIR No. 0480 registered with the Goregaon Police Station, Brihanmumbai City, on 4th August, 2023. Sections 120B, 406, 409 and 420 of the Indian Penal Code, 1860 have been invoked. On the same day, the crime was transferred to the Economic Offences Wing (EOW) which has investigated into the matter.

2. The learned A.P.P. submits that the EOW is preparing the charge-sheet and within 45 days, the charge-sheet would be filed in the Court. Respondent No.2 instructing the learned A.P.P., is present in the Court.

3. Mr. Ali Akbar Shroff is the Power of Attorney of Respondent No.3, Mr. Richard Mamod Tahora, the sole Complainant. The Complainant has tendered a consenting affidavit dated 23rd

September, 2024 at page nos. 77 to 80.

4. It is canvassed on behalf of the Complainant/Informant that the table which would govern the timeline of payment, is set out at page nos. 53 and 54 of the earlier Consent Terms dated 5th July, 2024 which are placed on record at pages 50 onwards. These are those Consent Terms which were tendered before this Court in a Civil Suit (L) No. 943 of 2023 and Civil Suit No. 59 of 2023. In view of the said Consent Terms that were tendered in the suit before this Court and the affidavit dated 23rd September, 2024, the Complainant has no objection if the said FIR is quashed.

5. The learned A.P.P. submits that during the course of the investigation in this FIR, names of two affected persons who can be termed as victims, have surfaced. One of them is Mr. Romulus Raul Pereira and the other is Mr. Pralhad Ganpat Desai. He, therefore, opposes the quashing of the FIR by consent by relying upon the law laid down by the Hon'ble Supreme Court in *P. Dharamaraj vs. Shanmugam & Ors., (2022) 15 SCC 136*.

6. One of the two victims viz. Mr. Romulus Raul Pereira has

preferred an intervention application for opposing the quashing of the FIR by consent. The learned Advocate on his behalf submits that though he has not filed an FIR, he was interrogated by the police as he came forward to tender a statement that he is also an affected person. So also, Mr. Pralhad Ganpat Desai had also come forward and registered his grievance before the EOW. He further submits that though he has initiated litigation under the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA), after receiving a favourable order, the parties are in counter appeals before the Appellate Authority. The Accused has raised an objection even on allotment of the flat as well as the grant of compensation for delayed possession and is in appeal for seeking compensation for delayed possession from an earlier date than the one which has been granted by the RERA Authority.

7. He further canvasses that the reason for opposing the quashing of the FIR is because his prayers before the RERA Authorities have civil ramifications, whereas his statements recorded by the EOW may constitute such material as would be required for the EOW to file a charge-sheet against the Accused persons and if the offence is proved, the punishment as prescribed in criminal law, would have to be suffered by the accused persons.

8. The learned A.P.P. submits on instructions that if the possession of the flats, which are allotted to the intervention applicant and the other affected person Mr. Desai, is given, the parties may seek quashing of FIR by consent.

9. The learned Senior Advocate representing the Accused submits that the building is still under construction. It was a project that was undertaken in 2010 hoping that the buildings would be constructed within good time. As the project ran into rough weather and serious financial difficulties arose, the project suffered a setback. Presently, a financial institution known as India Bulls, now known as Samman Capital, is financing the project. It is expected that the building would be constructed and OC would be hopefully received within a period of 18 to 24 months.

10. Considering the above, on the one hand, the sole Complainant has entered into a settlement with the Accused and does not desire to pursue the FIR further since he is not interested in taking the matter to trial. On the other hand, the EOW insists that the two victims i.e. the intervention applicant and Mr. Desai, cannot be left in the lurch

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since they are equally affected. Their desire to have a flat may not be fructified if the FIR is quashed. If the Accused settle the matter with both these persons, they may move this Court by consent for seeking quashing of the FIR.

11. The learned Senior Advocate representing the Accused submits that both these affected persons have already knocked the door of the adjudicating authority under the provisions of the RERA. The issue as to whether they are entitled for individual flats as well as compensation for delayed possession. The proceedings insofar as Mr.Desai is concerned, are still pending before the First Authority.

12. Keeping in view the above peculiar aspects, we find that as the rights of the victims need to be considered and as any person can put the criminal law in motion, these alleged victims would have equal rights in the pending criminal proceeding. At the same time, the Complainant does not desire to take the matter further and prays that the FIR be quashed by consent. In our view, if the FIR is quashed, though these two victims would have the opportunity of reiterating their rights before the RERA Authorities, the trial would conclude.

13. As such, the way out in such a situation could be that we could direct the EOW not to file a charge-sheet as against the Accused only in relation to the Complainant Mr. Ali Akbar Shroff. The EOW would be at liberty to prepare the charge-sheet and file it in the appropriate Court with regard to the two victims, i.e. Mr. Romulus Raul Pereira and Mr. Pralhad Ganpat Desai.

14. In the light of the above, this **Writ Petition is disposed off** with the direction that the EOW would not file a charge-sheet as against the present Petitioners qua the Informant Mr. Ali Akbar Shroff.

15. Insofar as the two purported victims viz. Mr. Romulus Raul Pereira and Mr. Pralhad Ganpat Desai, they are at liberty to proceed in accordance with law.

16. In the light of this order, the **Intervention Application stands disposed off**.

17. The learned Senior Advocate submits on instructions that the Accused may avail of the remedy of seeking discharge after the charge-sheet is filed in relation to Mr. Romulus Raul Pereira and Mr.

Pralhad Ganpat Desai and all contentions be kept open.

18. It goes without saying that since the Accused can avail of a remedy of seeking discharge, all contentions of the parties are kept open and the observations of this Court in this order, though we have avoided making any observations, would be restricted to the cause in this Petition.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)