

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

CRIMINAL APPLICATION NO.1786 OF 2024

Nimish Vora and Ors.

.... Applicants

Versus

The State of Maharashtra and Ors.

.... Respondents

.....

Ms.Kausar Banatwala a/w. Ms.Dipsy Sequeria i/b. Mr.Tushar Goradia, Advocate for the Applicants.

Mr.S.R. Agarkar, APP for Respondent No.1-State.

Mr.Sufyan Mirchiwala i/b. M/s.YNA Legal, Advocate for Respondent Nos.2 and 3.

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***CORAM : Sarang V. Kotwal &
S.M. Modak, JJ.***

DATED : 04.03.2025

P.C. :

1 This is an application for quashing of the First Information Report (FIR) registered *vide* CR No.30 of 2023 registered at Tardeo police station on 20.01.2024 under Sections 406, 420, 120(B) of the Indian Penal Code (IPC) and the consequent case pending before the 40th Additional Metropolitan Magistrate, Girgaon, Mumbai, *vide* case No.PW/324/2024.

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2 The FIR is lodged by Respondent No.2. Respondent No.3 is his mother. It is mentioned in the FIR that in the year 2013, he wanted to purchase a flat. Through a common friend, he came in contact with the Petitioners Mansukhlal and Jignesh i.e. Petitioner Nos.3 and 4. Respondent No.2 and his father met both Petitioners in April 2013. He was told by them that their projects were going on at Mulund. Respondent No.2 and his father decided to purchase a flat on the 10th floor in the project named “Kavya Heights” at Mulund. The flat number was 1002, admeasuring 940 sq. ft. According to the FIR, he paid an amount of Rs.69,30,000/- (Rupees Sixty-Nine Lakhs Thirty Thousand only) for the flat and Rs.2,14,137 (Rupees Two Lakhs Fourteen Thousand One Hundred and Thirty-Seven only) as service tax. Respondent No.2 was given an allotment letter.

3 For a considerable period, the project did not commence. The construction did not start. Therefore, the Respondent No.2 issued a legal notice on 16.07.2019. However, he did not get any reply. Respondent No.2 sent another notice dated 03.12.2019, yet there was no progress. Respondent No.2 approached Tardeo Police Station, Mumbai. During that period, the other Applicant, Jignesh Vora, associated with Kavya Bildcon Private Limited,

Mumbai, promised to return the money. He also showed willingness to enter into an MOU. Accordingly, on 16.11.2021 an MOU was executed, but subsequently, Kajal, Applicant no.2 who was the Chief Finance Officer of Kamaskshi Enterprises sent an E-mail mentioning that the MOU was cancelled. As a result, the Respondents had suffered a loss of Rs.71,44,137/- and were denied possession of the flat. On this basis the FIR was lodged.

4 Subsequently, the matter is now settled between the parties. Respondent Nos.2 and 3 have filed their joint affidavit. It is mentioned in the affidavit that they had entered into a Settlement Agreement on 14.11.2024 pursuant to which they were given three Shops i.e. Unit Nos.11, 12 and 13 in the project named "Kavya Park" valued at Rs.79,69,375/-. In paragraph No.5, the Respondent Nos.2 and 3 state that they have no claims of whatsoever nature against the Applicants.

In paragraph 7, the Respondent Nos.2 and 3 have clearly stated that they had their consent for quashing the FIR and the consequent proceedings. They reiterated the same stand in paragraph no.8.

5 Respondent Nos.2 and 3 appeared before the Court through Video Conferencing and they were identified by their

learned counsel. They reiterated the contents of the affidavit and stated before the Court through Video Conferencing that they had no objection for quashing of the FIR. Even the learned APP, on instructions, stated that the investigation was restricted to the dispute between these two parties and there was no grievance of any other victim in this case.

6 The dispute between the parties was purely personal and commercial in nature. The society at large is not involved. The parties have settled the dispute. Respondent Nos.2 and 3 have accepted three shops in lieu of the flat which they were to get. They have given their 'no objection' for quashing of the proceedings. No purpose will be served by continuation of the criminal prosecution. Therefore, we are inclined to allow this application.

7 Hence, we pass the following order.

:: ORDER ::

- (i) The FIR registered *vide* CR No.30 of 2023, at Tardeo Police Station, Mumbai, and the resultant

C.C. No.PW/324/2024, pending before the
Additional Chief Judicial Magistrate 40th Court,
Girgaon, Mumbai, are quashed and set aside;

(ii) Criminal Application is accordingly disposed of.

(S.M. Modak, J.)

(Sarang V. Kotwal, J.)