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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4547 OF 2015

Jakkula Kiran Kumar and Ors.

..Petitioners.

V/s.

The State of Maharashtra and Anr.

..Respondents.

Ms.Mallika Ingle i/b. Mr.Bhanudas Jagtap for the petitioners.

Mrs.U.V.Kejriwal, APP for respondent-State.

Ms.Sharon Patole for respondent No.2.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 23RD DECEMBER, 2015

P.C. :-

1. Heard learned counsel for the petitioners, learned counsel for respondent No.2 and learned A.P.P. for the State. This petition is filed under Article 226 of the Constitution of India and under the provisions of Section 482 of the Code of Criminal Procedure, 1973 for quashing the Criminal Case No.79/2013 pending before the Court of Sessions Court for Borivali Dindhoshi, Mumbai, Court Room No.12, on the basis of F.I.R. bearing No.114/2013 registered with the Samtanagar police station, Mumbai at the instance of respondent No.2 against the petitioners for the offences punishable under Sections 498A, 306, 511, 406, 377, 504, 506 read

with Section 34 of the Indian Penal Code.

2. Petitioner No.1 and respondent No.2 got married on 23rd February, 2011. Petitioner Nos.2 and 3 are family members of petitioner No.1. Matrimonial disputes between the parties gave rise to the filing of several criminal cases as well as civil matters. The Sessions case, the subject matter in the present petition is one amongst them.

3. Petitioner No.1 and respondent No.2 had filed a petition for divorce by mutual consent in the Family Court at Hyderabad being O.P. No.2005 of 2014 and a decree of divorce by mutual consent under section 13B of the Hindu Marriage Act is already passed on 21st September, 2015.

4. Pending trial, the parties decided to have amicably settle their dispute and in pursuance of an understanding arrived at between them, they have approached this Court for quashing of the subject Sessions Case No.79/2013 pending in the Sessions Court for Borivali Division at Dindoshi, Mumbai Court Room No.12 by consent. Respondent No.2 has filed an affidavit on 23rd December, 2015. In the last paragraph, she has stated that she has no objection if the subject Sessions Case is quashed. Respondent No.2 is personally present before the Court. She is identified by her

Advocate. On being questioned, respondent No.2 has specifically stated that she has gone through the affidavit and has fully understood the contents thereof and has no objection if the subject criminal proceedings are quashed. She states that she has received the amount as agreed between them. She has stated that she is giving no objection for quashing the subject Sessions Case out of free will and without there being any pressure or coercion.

5. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the offence. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **B.S.Joshi versus State of Haryana AIR 2003 SC 1386**, we are of the view that quashing of the proceedings of the criminal case would be in the interest of respondent No.2. Besides that, no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the subject criminal case / subject F.I.R. is required to be quashed. However, looking to the allegations in the FIR, cost needs to be saddled on the parties for using the police and judicial mechanism for settling their personal

disputes.

6. Accordingly, the petition is made absolute in terms of prayer clause (a) subject to payment of costs of Rs.50,000/- to be paid by the petitioners to Tata Memorial Hospital and thereafter produce the receipt thereof on the file of this petition within a period of four weeks from today, failing which, the writ petition shall stand dismissed automatically without further reference to the Court.

7. At this stage, it is reported that under panchama dated 4th March, 2013, a copy of which is annexed at page No28, a yellow colour metal chain (gold chain weighing 10 to 15 gms.) has been seized from respondent No.2 and a Samsung mobile has been seized from petitioner No.1. The petitioner No.1 states that the mobile belongs to him and the gold chain belongs to respondent No.2. Respondent No.2 also states that the gold chain belongs to her and the mobile belongs to petitioner No.1. Since we are quashing the subject Sessions Case No.79/2013 pending on the file of Sessions Court for Borivali Division at Dindoshi, Mumbai Court Room No.12, we direct the Senior Police Inspector, Samtanagar police station, Mumbai to return the yellow colour metal chain (gold chain) to respondent No.2 and the Samsung Mobile to petitioner No.1, after deleting all obscene data, if any, from the mobile. In

case, the abovesaid properties are already forwarded to the Sessions Court along with the charge-sheet, then the Sessions Court is directed to return these properties in accordance with the directions given above.

8. Subject to above, the petition is disposed of.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)