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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1096 OF 2016

Girish Kumar Tribhuvan and Ors.

..Petitioners.

V/s.

State of Maharashtra and Anr.

..Respondents.

Mr.Himanshu Kode for the petitioners.

Mr.S.D. Shinde, APP for the respondent-State.

Mr.Vaibhav Karnik for respondent No.2.

**CORAM : NARESH H.PATIL AND
A.M.BADAR, JJ.**

DATED : 11TH APRIL, 2016

P.C. :-

1. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioners / accused in F.I.R. bearing C.R. No.I-49/14 registered with Kashimira police station, Mumbai for offences punishable under section 498A, 354, 323, 504, 506 and 406 read with 34 of the Indian penal

Code, 1973 at the instance of Mrs.Priti Thakur are praying for quashing and setting aside the said F.I.R.

2. Heard learned counsel appearing for petitioners / accused as well as learned counsel appearing for respondent No.2 Mrs.Priti. They have unanimously submitted that the matrimonial dispute that had arisen between the parties is completely settled and petitioner No.1 / husband and respondent No.2 / wife agreed to end the matrimonial ties between them by filing a joint petition for a decree of divorce by mutual consent under section 13B Hindu Marriage Act, 1955. Our attention is also drawn to affidavit placed on record by respondent No.2 Mrs.Priti / informant wherein she has stated that because of resolving matrimonial dispute, F.I.R. lodged her may be quashed and set aside.

3. We have also heard learned APP appearing for the State.

4. Perusal of the affidavit of respondent No.2 / Priti shows that parties have arrived at compromise in Lok Nayalaya and they have decided to settle the matter. Affidavit further

shows that parties are resorting to the provisions of Section 13B of the Hindu Marriage Act, 1955 for seeking divorce by mutual consent. Petitioners as well as respondent No.1 Priti are present before the Court. Upon being inquired, respondent No.2 Priti has stated that matrimonial dispute between the parties is amicably settled and she does not want to continue prosecution of the petitioners in pursuance to the F.I.R. lodged by her. Alleged offences are not involving any public law element. Because of settlement of matrimonial dispute, prosecution of petitioners / accused would certainly amount of abuse of process of the Court. Allegations in respect of the offence punishable under section 354 of the Indian Penal Code are vague and the said incident is alleged to have happened way back in the year 2012. It was reported for the first time in the F.I.R. 26/2/2014. The allegations seems to have been made in the heat of moment as respondent No.2 had decided to lodge the F.I.R. Continuation of prosecution in such eventuality would result in acquittal of accused persons and chances of conviction are remove. In the light of the foregoing reasons, we pass the following order:-

- (i) Petition is allowed;
- (ii) F.I.R. bearing C.R. No.I-49/14 registered with Kashimira police station, Mumbai for offences punishable under section 498A, 354, 323, 504, 506 and 406 read with 34 of the Indian penal Code, 1973 at the instance of Mrs.Priti Thakur. as well as subsequent proceedings are quashed and set aside.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)