

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.308 OF 2016

Ganpati Tribhuvan Tiwari	Applicant
versus	
State of Maharashtra and others	Respondents

Mr.Rajesh P. Khobragade for Applicant.
Mrs.M.H.Mhatre, APP, for State.
Mr.Abhijeet Naik for Respondent no.2.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 20th April 2016

PC :

1. Not on board. Production of papers is allowed by 5.00 p.m.
2. Rule. Learned APP waives service for the first Respondent. Learned counsel for the second Respondent waives service. Forthwith taken up for final disposal.
3. The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 ('Code') is for quashing a criminal case on the basis of first information report ('FIR') filed at the instance of second Respondent against the Applicant

for the offence punishable under Sections 498A, 323, 406, 504 read with Section 34 of Indian Penal Code ('IPC').

4. Reliance is placed on the consent terms filed in Petition No.A-2970 of 2011 in the family Court at Bandra on 26th February 2016, a copy of which is annexed as Exhibit-B to the application. On 11th March 2016, the second Respondent has given no objection for grant of prayers made in this application on account of settlement. Today the Applicant has tendered affidavit of today's date, recording his no objection and irrevocable consent to allow Respondent no.2 to withdraw Rs.7.00 lakh (Rs.Seven lakh only) deposited in terms of the consent terms filed before the Family Court. The second Respondent has filed additional affidavit of today's date in which she has given undertaking in paragraph 3 thereof. The undertaking is that on receipt of the demand draft of Rs.7 lakh, she will give consent for passing a decree for divorce by mutual consent and that she will withdraw the proceedings under the Protection of Women from Domestic Violence Act, 2005 pending before the Court of 32nd Metropolitan Magistrate, at Bandra, Mumbai.

5. We have perused the FIR. It is apparent that the dispute between the Applicant and the second Respondent is a matrimonial dispute. Consent terms filed in the Family Court show that there is a complete settlement of all the subsisting

disputes between the parties and that the parties have agreed to take divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The Applicant has filed an affidavit today recording his no objection enabling the second Respondent to encash a demand draft in the sum of Rs.7 lakh (Rs.Seven lakh only), which is already deposited in the Family Court.

6. In view of the law laid down in the case of **Gian Singh Vs. State of Punjab and another**¹, this is a fit case to exercise power of this Court under Section 482 of the Code. The undertaking in paragraph 3 of the affidavit of the second Respondent tendered today deserves to be accepted. The statements in the affidavit of the Applicant tendered today are accepted. Accordingly, the Family Court will have to issue direction to allow the second Respondent to receive the demand draft deposited by the Applicant in the sum of Rs.7 lakh. We accordingly accept the statements and undertakings given by Applicant and Respondent no.2 in their affidavits dated 20th April 2016 respectively.

7. Accordingly, we pass following order :

(a) The undertaking of the second Respondent in paragraph 3 of affidavit dated 20th April 2016, which is taken on record and marked 'X-2' for identification, is accepted;

¹ (2012)10-SCC-303

(b) The statements made by the Applicant in affidavit dated 20th April 2016, which is taken on record and marked 'A-3' for identification, and particularly statement in paragraph 3 thereof, are accepted;

(c) Rule is made absolute in terms of prayer clause (b), which reads thus :

"(b) This Hon'ble Court may kindly quash the C.C. No.1227/PW/2012 filed before 24th Court at Borivali, Mumbai, arising out of FIR 25/2012, dated 25.01.2012 at the instance of Kurar Police, through complainant Mrs.Angoora Ganpati Tiwari."

(d) We direct the Registrar of Family Court, at Bandra, Mumbai to hand over demand draft of Rs.7 lakh (Rs.Seven lakh only) deposited by the Applicant herein with the said Court, to the second Respondent. The demand draft shall be handed over to the second Respondent on production of an ordinary copy of this order duly authenticated by the registry of this Court, notwithstanding clause-5 of the consent terms dated 26th February 2016.

(e) All concerned to act on authenticated copy of this order.

(PD.NAIK, J.)

(A.S.OKA, J.)