

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1498 OF 2016

1. Sanjay Suresh Kilachand,
2. Krishnaraj Sanjay Kilachand,
both R/o. Mumbai.

Petitioners

versus

1. The State of Maharashtra
through Senior Inspector, Gamdevi Police
Station, Mumbai.

2. Mrs.Bindu Sanjay Kilachand,
R/o. Mumbai.

Respondents

Mr.Sanjog Parab with Mr.Prateik Parija i/by M/s.Probus Legal
for Petitioners.

Mr.K.V.Saste, APP, for State.

Mr.Waseem Pangadkar i/by MZM Legal for Respondent no.2.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 24 June 2016

PC :

1. Rule. Rule is made returnable forthwith. Mr.Waseem Pangarkar waives service for second Respondent. Learned APP waives service for the State.

2. The Petitioners have approached this Court by invoking writ jurisdiction under Article 226 of the Constitution of India as well as inherent power under Section 482 of the Code of

Criminal Procedure, 1973. The Petitioners are seeking to challenge the first information report ('FIR') registered with Gamdevi Police Station vide CR No.37 of 2016 for offences punishable under Sections 498A, 406 read with Section 34 of Indian Penal Code. The said FIR was registered at the instance of second Respondent.

3. The second Respondent has alleged that the accused (Petitioners) are her husband and son respectively. It is alleged that the marriage was solemnized on 24 April 2012. The first Petitioner was the widower at the time of marriage. Second Petitioner is the son of Petitioner no.1 who was born out of the marriage solemnized with his first wife. It is further alleged that the second Respondent has parted with amount by way of financial assistance to the Petitioner no.1 from time to time. She also cleared the debt of the Petitioner no.1. It was also alleged that the second Respondent was abused and insulted from time to time by the Petitioners. The Petitioner no.1 also started demanding divorce with the second Respondent. The Petitioners also retained jewellery belonging to the second Respondent. Several other allegations were reflected in the FIR which are not necessary to be reproduced. The acts alleged in the FIR had allegedly caused mental cruelty to the second Respondent. In view of the circumstances and ill-treatment meted out to the second Respondent, she lodged the impugned FIR with the said Police Station on 3 February 2016.

4. The second Respondent also initiated proceedings under Protection of Women from Domestic Violence Act, 2005 in the Court of Metropolitan Magistrate, 40th Court, Girgaum, Mumbai bearing CC No.2779 of 2015. During the course of these proceedings through interventions of the family members, the Petitioners and the second Respondent have arrived at amicable settlement. The Petitioners and the second Respondent have executed consent terms which are annexed to the petition. In the said consent terms, it is stated that the parties agree and undertake to file a petition for grant of divorce by mutual consent under Section 13B of the Hindu Marriage Act pursuant to the execution of the consent terms. It is further mentioned that the parties have agreed to withdraw all proceedings either civil or criminal filed against each other. Several other terms reflected in the said consent terms, which are not required to be reproduced herein.

5. Learned counsel appearing for the Petitioners and the second Respondent have submitted that the parties have amicably settled their disputes and have executed the consent terms. It is further submitted that in view of the disputes being resolved, the second Respondent do not wish to pursue the criminal proceedings initiated by her vide the impugned FIR. It is submitted that the second Respondent has no objection for quashing the FIR which is under challenge in this petition. The

second Respondent has also tendered an affidavit dated 24 June 2016 before this Court. In the said affidavit it has been stated that the Petitioners and the second Respondent have amicably settled the matter and subsequently signed the consent terms dated 4 April 2016. It is also mentioned that the second Respondent withdraws all allegations made against the Petitioners. It is further mentioned that Petitioner no.1 and the second Respondent have filed a petition for divorce by mutual consent before the Family Court at Mumbai wherein above referred consent terms are executed. The second Respondent has categorically stated that in view of the consent terms executed on 4 April 2016, she has no objection if the impugned FIR registered vide CR No.37 of 2016 lodged at Gamdevi Police Station, is quashed and set aside.

6. We have gone through the contents of the petition as well as documents annexed thereto. We have also perused the affidavit tendered by the second Respondent in support of the prayers in this petition. We are satisfied that the parties to this petition have resolved their disputes and with a view to maintain harmony and peace, they have decided to put an end to the proceedings. The second Respondent has consented for quashing the impugned FIR. On perusal of the FIR, it is apparent that the dispute is of private nature which had arisen out of matrimonial differences. We have gone through the consent terms as well as contents of the affidavit tendered by

the second Respondent. It is apparent that the first Petitioner and the second Respondent have also initiated proceedings before Family Court for seeking divorce by mutual consent. In view of the aforesaid circumstances, we are inclined to allow the petition and quash the impugned proceedings. In the case of **Gian Singh Vs. State of Punjab and another**¹, the Apex Court has observed that in case of disputes which are private in nature, the High Court may exercise its power and quash the proceedings, in the event all the parties amicably settle the differences. The present dispute relates to matrimonial dispute. Therefore, we are inclined to quash and set aside the impugned FIR.

7. In the circumstances, we pass following order :

- (a) Rule is made absolute;
- (b) FIR registered with Gamdevi Police Station, Mumbai vide CR No.37 of 2016 for offences punishable under Sections 498A, 406 read with Section 34 of Indian Penal Code is quashed and set aside;
- (c) All concerned to act on an ordinary copy of this order duly authenticated by registry of this Court.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST

¹ (2012)10-SCC-303