

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.434 OF 2016

Manishchandra Gopal Sinha and another	Applicants
versus	
The State of Maharashtra and another	Respondents

Ms.Arati Baliram Bhoir for Applicants.
Dr.F.R.Shaikh, APP, for State.
Mr.Devendra Udani 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. This is an application under Section 482 of the Code of Criminal Procedure, 1973 ('Code') seeking quashing of first information report ('FIR') registered with Samatanagar Police Station, Kandivali, vide CR No.342 of 2011. The Applicants and the second Respondent are seeking quashing of above CR, by consent, on the ground that both the parties have amicably settled their disputes. The first Applicant is the husband of the second Respondent.

4. The offence has been registered under Sections 498A, 406 read with Section 34 of Indian Penal Code. It appears that on completing the investigation, the charge sheet has been filed and the case is numbered as CC No.2056/PWD/2012 and the same is pending before the Court of Metropolitan Magistrate, 17th Court, at Borivali. The second Respondent had filed Petition No.A-2808 of 2011 before the Family Court at Mumbai seeking divorce. The consent terms have been filed in the said Court on 4th September 2015. In the said consent terms it has been mentioned that the first Applicant and the second Respondent have agreed to withdraw the allegations made against each other. It is also mentioned that the first Applicant has deposited a sum of Rs.3 lakhs (Rs.Three lakh only) before the Family Court. In clause-6 of the said consent terms, it is mentioned that the second Respondent has agreed and undertaken to withdraw criminal proceedings initiated by her, which is the subject matter of present application. As per consent terms, the first Applicant and the second Respondent have agreed to take divorce by mutual consent. The said consent terms are annexed to this application.

5. The second Respondent has filed an affidavit dated 18th April 2016 before this Court stating that the Applicants and the second Respondent have amicably settled their disputes among themselves. It is also mentioned that she is not willing to

pursue the case filed by her as she has settled all her differences with the Applicants herein. The said affidavit is taken on record and marked "X-1" for identification. The first Applicant has also tendered an affidavit dated 20th April 2016 in this Court wherein it has been mentioned that he has settled all the disputes and differences with the second Respondent and he has signed the consent terms which are filed before the Family Court, at Bandra, Mumbai. It is further stated by him that if this Court passes an order of quashing the impugned FIR, which is registered with Samatanagar Police Station, Kandivali, he undertakes that he will not object to withdrawal of the sum of Rs.3 lakh by second Respondent which has been deposited by him with the Family Court, and that he will not back out from the terms of the consent terms. The said affidavit dated 20th April 2016 is taken on record and marked "X-2" for identification.

6. We have gone through the FIR and the documents on record as well as affidavits filed by the respective parties. It is ample clear that basically the dispute is matrimonial in nature. Now the first Applicant and the second Respondent have amicably settled all their disputes and differences and filed consent terms to obtain divorce by mutual consent in the Family Court. In view of the decision of Apex Court in case of **Gian Singh Vs. State of Punjab and another**¹, this is a fit case to

¹ (2012)10-SCC-303

exercise powers under Section 482 of the Code. Hence, we are inclined to quash the FIR and consequential proceedings arising out of the impugned FIR.

7. Accordingly, we pass following order :

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

"(a) This Hon'ble Court be pleased to quash the entire complaint arising out of C.R.No.342 of 2011, against the present Applicants, registered with Kandivali Samtanagar Police Station, Mumbai dated 22.07.2011 for offences punishable under Sections 498-A, 406 r/w 34 of IPC lodged by Respondent no.2 and any further proceedings thereof."

(b) The Family Court, at Bandra, Mumbai is directed to hand over the demand draft of Rs.3 lakh (Rs.Three lakh only) deposited by the first Applicant herein, to the second Respondent, on production of an ordinary copy of this order duly authenticated by the registry of this Court;

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

(PD.NAIK, J.)

(A.S.OKA, J.)