

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1805 OF 2016

Pramod Kamalaprasad Pathak	.. Petitioner
V/s.	
The State of Maharashtra & Ors.	.. Respondents

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Mr. Manoj Singh i/b. Mr. Ravindra Yadav, Advocate for the Petitioner.

Mr. Durga Prasad B. Halwai i/b. Mr. Premchand Pal, Advocate for Respondent No.2.

Mr. S. D. Shine, APP for Respondent – State.

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

DATED : JUNE 28, 2016.

JUDGMENT (PRAKASH D. NAIK, J.) :

Rule. Rule is made returnable forthwith.

2 Learned APP for Respondent – State waives service of notice.

3 The petitioner has preferred the present petition under Article 226 of the Constitution of India challenging the criminal proceedings arising out of C.C. No. 1438/PW/2014 pending before the Metropolitan Magistrate 45th Court, Kurla, Mumbai.

4 The petitioner and respondent nos.3 to 6 are implicated as accused in First Information Report (For short "FIR") bearing C.R No.2 of 2014 registered with V.B. Nagar Police Station on 20th March, 2014 for offences punishable under Section 498-A, 406 read with Section 34 of the Indian Penal Code (for short "IPC"). The said FIR was registered at the instance of the second respondent. On completing the investigation, charge-sheet has been filed in the aforesaid Court.

5 The grievance of second respondent in the aforesaid FIR is that pursuant to the solemnization of her marriage with the petitioner, she was subjected to harassment resulting into mental cruelty. It is alleged that the accused had ill-treated her from time to time. The accused also demanded money from her. It is also alleged that the ornaments which were given to her by her parents as Stridhan were misappropriated by the accused.

6 The petitioner is the husband of the second respondent. Respondent nos.3 and 4 are the parents of the petitioner and respondent nos.5 and 6 are the brother-in-law and sister-in-law of petitioner. Petitioner has prayed that the

proceedings arising out of the aforesaid FIR which is pending in the above said Court may be quashed and set aside with consent of the second respondent.

7 Learned counsel appearing for the petitioner and respondents have submitted that the parties have arrived at amicable settlement and hence, the impugned proceedings may be quashed and set aside with the consent of both the parties. Parties have relied upon the Consent Terms which are annexed to the petition and which were filed before the Family Court, Mumbai in Petition No.A-865 of 2003. In the said Consent Terms which were executed between the petitioner and the second respondent, it is stated that both the parties have agreed to withdraw all the allegations made against each other. Both the parties have further agreed to convert this petition into divorce by mutual consent. It is further mentioned that the petitioner has agreed to pay Rs.2,75,000/- towards full and final settlement as permanent maintenance/alimony and Stridhan to the second respondent. The petitioner has agreed to deposit the said amount in the Family Court. A xerox copy of demand draft of Rs.2,75,000/- issued in the name of Principle Judge, Family Court, Bandra, Mumbai has been annexed to the petition. It is further

mentioned that the second respondent will be entitled to withdraw the amount of alimony deposited by the petitioner. The second respondent had agreed to co-operate with the petitioner to quash the criminal case registered under Section 498-A of the IPC. The second respondent has tendered an affidavit before the Court. In the said affidavit, it is stated that there has been settlement between the parties and, therefore, she is withdrawing her allegations against the petitioner in Family Court. It is further mentioned that they have agreed to take divorce by mutual consent and that the second respondent has withdrawn the case filed by her under the Protection of Women from Domestic Violence Act, 2005 (for short "the Domestic Violence Act"). He further stated that she is entitled to Rs.2,75,000/- as permanent alimony from the petitioner which is already deposited by him before the Family Court at Bandra. It is further mentioned that she has no grievance or complaint against the petitioner and respondent nos.3 to 6 and she do not want to prosecute petitioner and other respondents in the subject criminal proceedings. She further stated that she has no objection for quashing the criminal case viz. C.C. No.1438/PW/2014, pending before the Metropolitan Magistrate 45th Court, Kurla, Mumbai. Respondent nos.3 to 6 have also tendered affidavit dated 28th June, 2016. In the said

affidavit, it is stated that all the disputes have been settled. It is also stated that they have no grievance or complaint against the second respondent. Both the affidavits are taken on record. They are marked as “**X**” and “**X-1**”, respectively for identification.

8 We have heard the advocate for both the parties as well as the learned APP for Respondent-State. Parties are present in Court. We have perused the documents annexed to the petition. We have gone through the Consent Terms submitted by petitioner and second respondent before the Family Court. We have also perused the affidavits tendered by respondent nos.2 to 6. From the submissions made by the respective advocates, as well as from the contents of the documents referred to hereinabove, it is apparent that the parties have amicably settled the dispute amongst each other. Petitioner and second respondent have resorted to divorce by mutual consent and Consent Terms were executed in the said proceedings. Petitioner has also deposited an amount of Rs.2,75,000/- by way of Demand Draft before the Family Court, as agreed upon in the Consent Terms. Second respondent has consented for quashing the subject criminal proceedings. Respondent nos.3 to 6 were also co-accused in the said proceedings. They have also submitted

affidavits and prayed for quashing of the criminal proceedings. Second respondent in the affidavit has stated that she has no grievance against the petitioner as well as against respondent nos.3 to 6 and she has no objection for quashing the impugned criminal proceedings. We are satisfied that the dispute are arising out of matrimonial differences between the parties in this petition. The dispute is of private nature and in view of the settlement arrived at between the parties, we are inclined to exercise powers under the writ jurisdiction to quash and set aside the said proceedings.

9 The Hon'ble Apex Court in the case of ***Gian Singh V/s. State of Punjab & Anr.***¹ has observed that in case of disputes which are of private nature, the High Court in exercise of its powers can quash the proceedings in the event of amicable settlement between the parties.

10 In the circumstances, no purpose will be served by keeping the proceedings pending. Parties have resolved their differences and have decided to put to an end to the proceedings against each other. It is pertinent to note that the second

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respondent has already withdrawn the proceedings under the Domestic Violence Act, and petitioner and second respondent have decided to dissolve their marriage by resorting to divorce by mutual consent before the Family Court. We are, therefore, satisfied that this is a fit case to exercise powers under the writ jurisdiction of this Court and to quash and set aside the impugned proceedings.

11 In view of the above, we pass the following order:

:: ORDER ::

- (i) Rule is made absolute.
- (ii) The criminal proceedings arising out of C.C. No. 1438/PW/2014 pending before the Metropolitan Magistrate 45th Court, Kurla, Mumbai stands quashed and set aside.
- (iii) Parties to act upon an authenticated copy of this order.

(PRAKASH D. NAIK, J.) (NARESH H. PATIL, J.)