

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
 CRIMINAL APPLICATION NO.875 OF 2016

...

Kanchan Samir Shah and anr.	...Applicants
v/s.	
The State of Maharashtra and anr.	...Respondents

WITH
 CRIMINAL APPLICATION NO.868 OF 2016

...

Samir Hemant Shah and anr.	...Applicants
v/s.	
The State of Maharashtra and anr.	...Respondents

...

Mr.Maitreya G.Shukla for the Applicants in APL/875/2016 and for the Respondent No.2 in APL 868/2016.
 Mr.Chaitanya Pendse for the Applicants in APL/868/2016 and for the Respondent No.2 in APL/875/2016.
 Dr.F.R.Shaikh, APP for the Respondent No.1-State.

...

CORAM : A.S.OKA &
A.A. SAYED, JJ.

DATED : 1 SEPTEMBER 2016

P.C.:

(Not on Board. Taken on Board.)

Rule. Learned APP waives service for the first Respondent.
 Learned Counsel appearing for the second Respondent in both Applications waives service. By consent of parties, heard finally.

2. Criminal Application No.868 of 2016 has been filed for quashing the First Information Report registered at the instance of the second Respondent in the said Application for the offences punishable under

sections 498-A, 406 read with section 34 of the Indian Penal Code. The first Applicant and the second Respondent are husband and wife. The second Applicant is father of the first Applicant.

3. Criminal Application No.875 of 2016 has been filed by the wife and her father, wherein the husband is the second Respondent. The prayer in this Application is for quashing the First Information Report registered at the instance of the husband for the offences punishable under sections 465, 467, 471, 420 read with section 34 of the Indian Penal Code.

4. In both the FIRs, after completion of the investigation, charge sheets have been filed.

5. Our attention is invited to the consent terms filed by the husband and wife in Petition No.A-379 of 2010 filed by the wife against the husband for divorce under the Hindu Marriage Act, 1955 before the Family Court at Bandra, Mumbai. The consent terms records the settlement of disputes between the husband and wife. It is an admitted position that the wife has received the entire amount due and payable as per the consent terms. Today, Affidavits have been filed by both husband and wife. In both Affidavits, it is stated that in terms of the consent terms, on 23 August 2016

a decree of divorce has been granted by the Family court at Bandra, Mumbai under section 13(B) of the Hindu Marriage Act, 1955. It is stated that an application for the certified copy of the judgment and decree is made, but the same has not been received. Under the consent terms, both the husband and wife have consented for quashing the criminal proceedings filed at their instance.

6. Criminal proceedings subject matter of Criminal Application No.868 of 2016 directly arose out of the matrimonial dispute. Even as regards the proceedings subject matter of Criminal Application No.875 of 2016, it is very clear that the matrimonial dispute led to the husband setting the criminal law in motion.

7. As there is a complete settlement of the matrimonial dispute, the continuation of the criminal proceedings which arose out of the matrimonial dispute will cause undue hardship to both the Applicants.

8. In the light of the law laid down by the Apex Court in the case of **Gian Singh v/s. State of Punjab and anr.**¹ this is a fit case to exercise the power under section 482 of the Code of Criminal Procedure, 1973. Hence, we pass the following order:

¹ (2012) 10 SCC 303

ORDER

In Criminal Application No.875 of 2016, rule is made absolute in terms of prayer clause (a), which reads thus:

“(a) this Hon'ble Court be pleased to quash C.C.No.46/PW/2014 which is pending on the file of Learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, against the Applicants under sections 465, 467, 471 r/w 34 of Indian Penal Code, 1860 on such terms and conditions as this Hon'ble Court may deem fit and proper.”

In Criminal Application No.868 of 2016, rule is made absolute in terms of prayer clause (a), which reads thus:

(a) this Hon'ble Court be pleased to quash C.C.No.129/PW/2014 which is pending on the file of Learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, against the Applicants under sections 498-A, 406 r/w 34 of Indian Penal Code, 1860 on such terms and conditions as this Hon'ble Court may deem fit and proper.”

(A.A. SAYED, J.)

(A.S.OKA, J.)