

sbw

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

CRIMINAL WRIT PETITION NO.2752 OF 2016

Mohammad Azeem Alam & ors. ... Petitioners
vs.
The State of Maharashtra & Anr. ... Respondents

Ms. Anushka Shreshtha for the petitioners.
Dr. F. R. Shaikh, APP, for respondent no.1-State.

**CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : 16TH SEPTEMBER, 2016.**

P.C.:

Rule. The learned APP waive service for the State.

2. The second respondent is personally present in the Court. The learned APP on instructions of Shri Sanjay Dhonnar, API, Vikroli Police Station, states that the person present today is the first informant in the First Information Report which is the subject matter of challenge in this petition. He states that the affidavit dated 6th August, 2016 tendered in this Court has been executed by the second respondent who is the first informant.

3. This petition is forthwith taken up for final hearing. The prayer in this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report registered at the instance of second respondent for the offence punishable under Section 406 and 498A read with section 34 of the Indian Penal Code.

4. The first petitioner and the second respondent are husband and wife. The petitioners are relying upon the Consent Terms which are part of this petition signed by the first petitioner and the second respondent before a Notary Public on 6th August, 2016. The Consent Terms record that the first petitioner and second respondent have agreed to resume co-habitation and to live happily as husband and wife. The second respondent has filed an affidavit affirming the settlement. In paragraph 10 of her affidavit, she has stated that she has decided to live with the first petitioner and that she has signed the Consent Terms.

5. Perusal of the statement of the second

respondent on the basis of which First Information Report is registered shows that the matrimonial dispute between the first petitioner and the second respondent led to the registration of the First Information Report. The second to fifth petitioners are the members of the family of the first petitioner and/or his relatives. As the first petitioner and the second respondent have resumed co-habitation on the terms and conditions agreed upon which are set out in the consent terms dated 6th August, 2016 the continuation of criminal proceedings will cause serious prejudice to both the first petitioner and the second respondent especially when they have reconciled and resumed co-habitation. Therefore, this is a fit case to exercise the powers of this Court under section 482 of the Code of Criminal Procedure, 1973.

6. Accordingly, we pass the following order:-

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

"That this Court be pleased to quash and set aside the C. R. No.360 of 2015, registered with Vikhroli Police Station, under Sections 406, 495, 498(A), 34 of I.P.C. Dated 26/10/2015

and further be pleased to discharge the petitioners from C.R. No.360 of 2015 registered with Vikhroli Police Station, under Sections 406, 495, 498(A), 34 of I.P.C. Dated 26/10/2015."

- ii) All concerned to act upon an authenticated copy of this order.

(A.K.MENON, J.)

(A.S.OKA, J.)