

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 287 OF 2017

1. Mr. Vijay Kundalik Kulal
Age : 37 years, Occ : Agri.,
2. Mr. Kundalikrao Rambhau Kulal
Age : 66 years, Occ : Retired,
3. Mrs. Sunita Kundalikrao Kulal
Age : 61 years, Occ : Housewife,

Adult, Indian Inhabitant all above
are residing at Jawahar Colony,
Mantha, Tq. Mantha, Dist. Jalna.
4. Mr. Rajkumar Kundlikrao Kulal
Age : 43 years, Occ : Service,
adult residing at Yashadara Colony,
Mantha Chowfully, Jalna.
5. Mrs. Chhaya Kundlik Kulal
Age : 36 years, Occ : Service,
Adult, R/o Hingoli, Tq. Hingoli,
Dist. Hingoli.
6. Mrs. Meena Kundlikrao Kulala
Age : 43 years, occ : Service, adult
residing at Ganesh Nagar Wardha
Tq. & Dist. Wardha.

..PETITIONERS

-VERSUS-

1. Mrs. Santoshi Vijay Kulal @ Wankhade
Adult, Occ : Housewife, residing
presently at Vanita Wankhada Chawl

Room No.3, Nivetiya Road Vadari Pada
Malad East Mumbai – 400 097.

2. The State of Maharashtra

..RESPONDENTS

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Advocate for petitioners:Mr. A.D. Aghav
APP for Respondent/State : Mr. S.B. Yawalkar
Advocate for respondent No.1 : Mr. M. Moses

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CORAM : S.S. SHINDE & K.K. SONAWANE, JJ.

Dated: March 06, 2017

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ORAL JUDGMENT (PER K.K. SONAWANE, J)

This is a Petition preferred by the petitioners under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure to quash and set aside the F.I.R. bearing crime No.68 of 2012 and consequently the criminal proceedings of Special (Atro.) Case No. 13 of 2013 registered under Sections 498-A, 506, 406, 34 of the Indian Penal Code and under Section 3(1)(x) and 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It has been contended that, petitioner no.1 Shri Vijay Kulal is the

husband of respondent no.1 Mrs. Santoshi Vijay Kulal @ Wankhade. Their marriage was performed in the year 2007 and she begotten one daughter namely Shreya during the wedlock from petitioner no.1 - Vijay. Thereafter, there was marital discord in between the spouse and their relations become strained. Respondent no.1 make allegation about the mental and physical torture on the part of the husband and inmates of the matrimonial home. Her marriage is inter-caste marriage and she belong to Scheduled caste community. The Respondent also made casteist allegations and cruelty meted out by her at the hands of the family members of the husband.

3. Pursuant to the first information report, the police of Mantha Police Station registered crime and set the criminal law in motion. The Investigating Officer recorded the statements of the witnesses and collected relevant documents. After completion of the investigation, the Investigating Officer filed charge-sheet against the petitioners before the Court of learned Special (Atro.) Judge at Jalna. The impugned charge-sheet registered in pursuant to the F.I.R. bearing

Crime No. 68 of 2012 is subject matter of the present Petition.

4. During the course of hearing, it has been contended that, the marital discord in between spouse has already settled amicably in between them. The respondent had withdrawn the proceedings filed on her behalf under the Domestic Violence Act as well as the proceedings seeking subsistence allowance before the Family Court, Bandra following compromise in between the spouses. The parties produced the consent terms filed in the Family Court, Bandra, in which it has been mentioned that, the petitioner – husband shall pay Rs.17,00,000/- to the wife respondent no.1 towards full and final settlement of the permanent alimony for herself and her daughter. It was agreed to withdraw the proceedings filed on behalf of the wife before the Court of law. The documents of order passed by the Family Court is produced on record. It appears that, the Petition filed by the wife respondent no.1 for maintenance came to be disposed of being withdrawn. The learned counsel appearing for the respondent no.1-wife also made statement

that, she has also withdrawn the case filed for subsistence allowance. Now the present proceeding is remained to be withdrawn on behalf of the Respondent – wife, so that, she could withdraw the amount, which has been deposited in the Family Court.

5. The Respondent – wife has suomoto appeared before this Court and filed affidavit and documents of consent terms etc. We have verified the contents of the affidavit and consent terms. The terms of settlement were also verified and affirmed by the concerned Registrar (Judicial) of this Court, who has given specific report that, the terms of settlement are read over and explained to the petitioners and the respondent no.1 in vernacular language and they have admitted the same as true and correct. Therefore, the Registrar (Judicial) proceeded to verify the terms of settlement in presence of both spouse and their counsel. During the course of interaction, respondent no.1 – wife has also contended that, the act of withdrawal of the proceeding is her voluntary act and for better future of herself and her daughter. She settled the

matter amicably by accepting the lumpsum amount of Rs.17,00,000/- from her husband towards permanent alimony for herself and her daughter. Therefore, she requested to allow her to withdraw this proceedings. During the course of interaction, she further stated that, petitioner no.1 - Vijay i.e. her husband deposited the amount of Rs.16,60,000/- in the Family Court, Bandra and the rest of the amount she has already received. Therefore, she has no objection for quashing and setting aside the impugned criminal proceedings initiated against the petitioners.

6. We are cautious that, the allegations against the petitioners are under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Investigating Officer applied sections 3(1) (x) and 3(1)(xi) of the Atrocities Act, against the petitioners. During the course of interaction, Respondent no.1 - wife submitted that, the petitioner hurled casteist allegations towards first informant - respondent no.1 - herein, when she was cohabiting with husband at matrimonial home.

But, the offence under the Atrocities Act alleged was allegedly committed within the four corners of the house and not within the public view. In such circumstances, it would be cumbersome to bring home guilt of the petitioner under Atrocities Act. Moreover, after careful scrutiny of the first information report, it appears that, no ingredients of the aforesaid Act are attracted.

7. Admittedly, the dispute is matrimonial in nature between the spouse. Therefore, there would not be any impediment to allow the parties to settle the matter amicably and withdrawal of the proceedings by exercising extraordinary jurisdiction under section 482 of the Code of Criminal Procedure, which would also help for better future of informant and her daughter. The matrimonial dispute between spouse would come to an end and it would bring mental peace for family members of both spouse. Hence we allow the Petition and consequently the proceedings in Special (Atro) Case No.13 of 2013 pending before the District and Sessions Court, Jalna pursuant to the F.I.R. bearing Crime No.

68/2012 under Sections 498-A, 506, 406, 34 of the Indian Penal Code is hereby quashed and set aside.

8. As mentioned above, all the proceedings filed on behalf of respondent no.1 – wife are withdrawn on her part, therefore, she is entitled to withdraw amount of Rs.16,60,000/- deposited in the Family Court, Bandra. She shall file the application before the Family Court, Bandra for withdrawal of the amount. After withdrawal of the amount, we are in agreement with the respondent no.1 – wife Santoshi to keep the amount of Rs.10,00,000/- in Fixed Deposit in the name of her daughter Shreya till she attained the age of majority. The amount so fixed be kept in the Nationalised Bank as per her choice. Respondent No.1 – wife Santoshi is also entitle to receive the interest accrued on the fixed deposit kept in the name of her daughter. In case of any contingency arises in future the respondent no.1 – wife Santoshi has an liberty to move application to the learned Family Court, Bandhra or this Court stating therein reasonable grounds to the satisfaction of Court for requisite

orders for withdrawal of amount of fixed deposit kept in the name of minor daughter Shreya.

9. With the above observation, the Petition stands allowed. The impugned criminal proceedings initiated against the petitioners is quashed and set aside. Rule made absolute accordingly.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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