

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 25 OF 2017**

Mr. Hardik Vijay Shah & Ors. ..Petitioners

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Vivek Kumar N. Singh for the Petitioner
Mrs. S.V.Sonawane, APP for the Respondent No.1.
Mr. Sharad Rai for the Respondent No.2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 9TH FEBRUARY, 2017**

ORAL JUDGMENT (PER A.S.OKA. J.)

1. Rule. The learned Counsel appearing for the second respondent waives service. The learned APP waives service for the first respondent. The first petitioner and the second respondent are personally present in the Court. Forthwith taken up for final disposal.

2. 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 the second respondent for the offences punishable under Section 498A, 323, 504, 506, 406 read with 34 of the Indian Penal Code. The first petitioner and the second respondent are the husband and wife. The second and the third petitioners are the parents of the first petitioner and the fourth petitioner is the sister of the first petitioner.

3. The first petitioner and the second respondent filed consent terms before the Family Court at Bandra, Mumbai. They agreed to settle their matrimonial dispute on the terms and conditions recorded therein. They agreed to take divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. It is pointed out that out of the sum of Rs. 12 lakhs payable by the first petitioner to the second respondent as per the consent terms, a sum of Rs.6 lakhs is already paid to the second respondent.

4. The second respondent has filed an affidavit confirming that there is a settlement between her and the first petitioner and that she has agreed for quashing the First Information Report.

5. The first petitioner has tendered an affidavit today. He has

given an undertaking to pay the balance amount of Rs.6 lakhs to the second respondent on or before 29th April, 2017. We accept the said undertaking. The learned Counsel appearing for the petitioners and the learned Counsel appearing for the second respondent, on instructions, state that the petition for grant of divorce by mutual consent is fixed before the Family Court on 29th April, 2017. The first petitioner and the second respondent, who are personally present in the Court, through their learned Counsel state that they will not withdraw their respective consent for granting a Decree of Divorce by mutual consent. We accept the aforesaid statements as their undertakings.

6. It is the matrimonial dispute between the first petitioner and the second respondent, which led to the registration of the First Information Report. Now, the matrimonial dispute is completely settled. In view of the settlement of the matrimonial dispute, now no purpose would be served by continuing the criminal proceedings, as continuation thereof will cause undue harassment to the husband and wife. Therefore, this is fit case to exercise powers under Section 482 of Code of Criminal Procedure, 1973.

7. Before we part with this Order, we may note a very important aspect. In the statement of the second respondent, on the basis of which the First Information Report was registered, she has specifically stated that the fourth petitioner, who is the sister of the first petitioner is handicapped and therefore, the second respondent was required to look after her. Thus, the police were aware that the fourth petitioner is a handicapped person as she was dependant on the care by others. Even according to the second respondent, the fourth petitioner was dependent on the care by others. The only allegation made by the second respondent in her statement is that she was forced to take care of the fourth petitioner. There is absolutely no allegation of the commission of any offence against the fourth petitioner. Notwithstanding the said fact, the fourth petitioner has been specifically shown as an accused in the First Information Report. The learned APP produced for perusal of this Court the Investigation papers. According to her, in the case diary of the subsequent dates, the name of the fourth petitioner does not figure as an accused. Admittedly, neither the Investigating Officer nor any other Police Officer attached to the concerned Police Station

informed the guardian of the fourth petitioner that the name of fourth petitioner as an accused has been deleted. There are documents annexed to the petition showing the condition of the fourth petitioner including the psychiatric report submitted by the National Institute for Mentally Handicapped Regional Centre, Navi Mumbai. The report is dated 27th June, 2014, which records that the fourth petitioner suffers from severe mental retardation and the percentage of her disability is 90.

8. Perhaps, the Officer who registered the First Information Report, did not bother to read the statement of the second respondent in which there is absolutely no allegation as against the fourth petitioner of commission of any offence. On the contrary, the statement of the second respondent clearly records that the fourth petitioner is handicapped and in fact, her in-laws forced the second respondent to take care of the fourth petitioner.

9. Notwithstanding the decisions of the Apex Court, the concerned Officer of the Police has shown a complete non application of mind. The concerned Officer who has shown the fourth petitioner as an accused has shown complete lack of sensitivity. There is nothing on

record to show that the mistake was corrected, as the guardian of the fourth petitioner was never informed about deletion of the name of the fourth petitioner as an accused.

10. Hence we pass the following order:-

- i) We direct the Registrar (Judicial-I), as well as the Office of the Public Prosecutor to forward a copy of this Order to the Director General of the Police, who shall issue necessary guidelines/ circular to all police stations calling upon the Officers to apply their mind.
- ii) For reporting compliance of the aforesaid direction, this petition shall be listed on 27th March, 2017 under the caption of “Directions”.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)