

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2225 OF 2017

Sandip Shankarlal Kedia and Others. ..Petitioners.
Versus
State of Maharashtra & Others. ..Respondents.

WITH
WRIT PETITION NO. 436 OF 2013

Sandip Shankarlal Kedia and Others. ..Petitioners.
Versus
State of Maharashtra & Anr. ..Respondents.

Mr. N. S. Mundargi and P. S. Patil i/b Triyama Legal for the Petitioners.
Mr. Prakash Mahadik for Respondent No. 2.
Mr. K. V. Saste, APP for the State.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.
Date : **June 14, 2017.**

P. C. :

1. Heard Mr. Mundargi, learned Counsel appearing for the Petitioner, Mr. Mahadik, learned Counsel appearing for the Respondent No. 2 (original complainant) and Mr. Saste, learned APP for the State.
2. Writ Petition No. 2225 of 2017 is filed for quashing and setting aside the order dated 28th August 2013 issued under section 156(3) of the Code of Criminal Procedure, 1973 by learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai in C.C.

No.38/SW/2013 and consequent registration of MECR No.9 of 2013 with Amboli Police Station for the offence punishable under sections 406 and 448, 120B read with 34 of the Indian Penal Code, 1860. Writ Petition No. 436 of 2013 is filed for quashing and setting aside FIR bearing CR No. 181 of 2012 registered with Cuffe Parade Police Station for the offence punishable under section 506 and 509 of IPC and section 6 of the Indecent Representation of Women (Prohibition) Act, 1986.

3. The Petitioner in both the petitions – Mr. Sandip Kedia and Pooja Kedia got married in March 2000. The matrimonial discord between the parties gave rise to filing of various civil as well as criminal cases.

3. Wife Pooja Kedia is the director of M/s. Basic Finvest Private Limited (Respondent No. 2 in W. P. No. 2225 of 2017) – the original complainant. One Vikash Berlia, power of attorney of Pooja Kedia and brother of Pooja has filed subject criminal case. As far as Writ Petition No. 436 of 2013 is concerned, FIR is filed by Mr. Vikash Berlia and Pooja Kedia is victim in this FIR. The disputes between the parties ultimately reached the Hon'ble Supreme Court. The parties

filed following proceedings in the Hon'ble Supreme Court :

- 1] Civil Appeal No. 11496 of 2016 (@SLP (C) No. 17561 of 2013)
- 2] Conmt. Pet. (C) No. 311 of 2013 in SLP(C) 17561 of 2013.
- 3] Conmt. Pet. (C) No. 440 of 2013 in SLP(C) 17561 of 2013.
- 4] Conmt. Pet. (C) No. 109 of 2014 in SLP(C) 17561 of 2013.
- 5] Conmt. Pet. (C) No. 457 of 2014 in SLP(C) 17561 of 2013.
- 6] Civil Appeals Nos. 11726-11727 of 2016(@SLP (C) Nos.35666-35667 of 2016
- 7] Civil Appeals No. 11725 of 2016 (@SLP (C) No. 12496 of 2015
- 8] Civil Appeal No. 11724 of 2016 (@SLP (C) No. 11829 of 2015.

4. The parties at the intervention of the friends, well-wishers and relatives settled their disputes amicably and accordingly filed mutual consent terms in the Hon'ble Supreme Court in aforementioned proceedings. The Supreme Court accordingly disposed of those proceedings in terms of the mutual consent terms by passing following order :

“CIVIL APPEAL No. 11496 OF 20016

Heard learned counsel for the parties.

The parties have settled tgheir disputes amicably and have filed the consent terms. The consent terms are signed by the parties. Accordingly, learned counsel for the parties have filed joint application for disposal of the appeal in terms of signed and affirmed mutual settlement dated 08.02.2017.

Both the parties, namely, Pooja Kedia and Sandip Shankarlal Kedia are present in Court. They state that they have entered into settlement dated 08.02.2017 on their own sweet will and have signed the terms of the said settlement.

The modification of the consent terms vide paragraph 3 of the joint application dated 05.04.2017 is allowed.

Accordingly, the disputes between the parties are directed to be finally settled in accordance with the consent terms of settlement dated 08.02.2017 (along with annexures) and modification vide paragraph 3 of the application dated 05.04.2017, which shall form part of the order.

Ordered accordingly.

The civil appeal is disposed of.

CONMT. PET. (C) NO. 440 OF 2013 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 311 OF 2013 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 109 OF 2014 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 457 OF 2014 IN SLP(C) 17561 OF 2013.
CIVIL APPEALS NOS. 11726-11727 OF 2016
CIVIL APPEALS NO. 11725 OF 2016
CIVIL APPEAL NO. 11724 OF 2016

In view of the order passed above, these appeals and contempt petitions are also disposed of in the same terms and directions.”

5. In terms of the consent terms, parties have approached this Court for quashing the subject MECR and FIR respectively, by consent. The learned Counsel invited our attention to sub-clauses (a) and (b) of clause VIII of the consent terms, which deal with the withdrawal of allegations and cases. Those sub-clauses read thus :

VIII) WITHDRAWAL OF ALLEGATIONS AND CASES

a) the Petitioner and the Respondent and all their family members and friends shall unconditionally withdraw within 15 days upon signing of present consent terms and passing of the decree of divorce in terms of the present consent term, all allegations,

cases, complaints, proceedings etc. whatsoever, levelled against each other and their friends, family members, relatives and their companies, in any Court of law and/or before any authority, forum, Passport Authority, etc., whatsoever, in India, Dubai and anywhere in the world. That after putting hands and signing of both the parties on the present consent terms and passing of the decree, all civil and criminal cases, or any other cases, complaints, proceedings, whatsoever, shall be withdrawn (compounded, quashed, dismissed) by the Petitioner and her other family members and friends against the Respondent, Mr. Sandip Kedia, his other family members and their companies and vice-versa and or shall get it quashed by both the parties by approaching Hon'ble High Court or concerned Police Station or authorities, forums and/or by way of a joint petition and /or affidavits. All criminal cases, custody petition, family Court cases, cases pending with metropolitan magistrate, City Civil and Sessions Court, High Court, Supreme Court and also all allegations levelled, cases, complaints, proceedings etc whatsoever filed by either parties in any of the Court of law at Dubai or any other Court of law in India or elsewhere shall stand withdrawn and /or dismissed as against the other party and their companies and both the parties shall have no objection, whatsoever, for withdrawing it unconditionally, and further, getting it quashed from the Hon'ble High Court and Dubai Court or any other forum. Even if either of the party or their representative is not present before the Hon'ble Court or forum, the complaint, cases, proceedings etc whatsoever shall stand withdrawn and quashed with implied consent of either party after passing of the decree; That all allegations leveled, cases, complaints, proceedings etc, whatsoever, in India or Dubai or elsewhere, before any forum, police, commission, authority, etc., whatsoever, whether, civil or criminal shall become nullity, void ab initio and as good as no complaint and or cases being made or pending and shall stand withdrawn / quashed after passing of the decree. That the affirmed affidavits of the friends and relatives of both parties are annexed herewith which shall be treated as part and

parcel of the present 'consent terms' and the decree. Copies/ drafts of the said affidavits are enclosed herewith as Annexure 2 and the originals of the said affidavits shall be tendered by both the parties to the Hon'ble Supreme Court of India within 4 days of filing of these settlement terms. The necessary board resolution of Basic Finvest Pvt Ltd. is enclosed as Annexure 3.

b) Both the parties shall provide a detailed list of all complaints, cases, proceedings, etc, whatsoever, (civil, criminal, matrimonial etc.) filed by each of them or their friends relatives till today with all the authorities and court/forums in India and Dubai or elsewhere, which shall become null and void, void ab initio and nullity on passing of the decree. Inadvertently, if any of the cases or complaints or proceedings before any forum, authority, Courts, police stations etc. are missing in either of the list given by the parties to each other, the same shall also stand withdrawn, null and void and quashed and the said authority or Court of law shall treat the same proceedings etc. as settled between the parties as per the present consent terms and decree by Hon'ble Supreme Court of India. The list of such cases / complaints in Dubai and India are enclosed herewith as Annexure 4.”

6. The reading of theses clauses make it unequivocally clear that parties agreed to unconditionally withdraw the cases including the subject FIR and this can be done even in the absence of the parties as they are residing at Dubai. Annexure 4 to the consent terms gives the list of cases filed by both the parties. Subject criminal case / MECR / FIR find reference in this list of the cases. Annexure 3 to the consent terms is the resolution dated 20th April 2016 filed by the

Basic Finvest Pvt Ltd. By this resolution, the company resolved to withdraw criminal cases filed against Omega Securities & Financial Services Pvt. Ltd., Mr. Sandip Kedia, Mr. Sankarlal Kedia and Mrs. Pushpa Kedia in Cuffe Parade Police Station and Amboli Police Station.

7. Page No. 39 of the consent terms is an affidavit by Mr. Vikash Berlia. In clause (2) of the affidavit he has stated that he unconditionally withdraws allegations, cases, complaints whatsoever made to authorities, forums, police stations, Courts, etc. whatsoever against Mr. Sandip Sankarlal Kedia. In clause (4) of the affidavit he has further averred that all the allegations, cases, complaints, proceedings etc. whatsoever as mentioned in clause (2) and (3) shall be treated as null and void, void ab initio, and nullity with immediate effect.

8. From the facts mentioned hereinabove it is absolutely clear that parties have settled their disputes before the Apex Court and filed mutual consent terms and the Apex Court disposed of the proceedings referred in paragraph No.3 above in terms of the mutual consent terms. In these mutual consent terms parties agreed to withdraw the cases filed against each other, including the subject cases. Even the presence of the parties is not necessary and implied

consent of the complainant is to be presumed. Be that as may, however, parties are represented by the Advocates and they submit that both the petitions be allowed and subject MECR and FIR be quashed.

9. In above fact-situation, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

10. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject MECR and FIR. In the light of above, Writ Petition 2225 of 2017 is made absolute in terms of prayer clause (b) and Writ Petition No. 436 of 2013 is made absolute in terms of prayer clause (b1). However, quashment is subject to payment of cost of Rs.25,000/- to TATA Memorial Hospital by the Petitioners in each petition. The Petitioners shall pay quantified cost and produce the receipts thereof on the file of these petitions within four weeks from today.

10. In view of the disposal of above writ petitions, applications, if any, taken out in these writ petition do not survive and the same are accordingly disposed of.

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]