

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.122 OF 2016

Pradipkumar Govindram Garg & Ors.Applicants
V/s.
Mona P. Garg and Anr.Respondents

Mr. M.U.Kazi, Advocate for Applicants.
Mr. K.V.Saste, APP for the Respondent-State.
None for Respondent No.1.

**CORAM :- R.M. SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 22ND AUGUST, 2017.

PC. :-

Heard Mr. M.U.Kazi for the Petitioner. None for the
Respondent No.1.

2 By the above Criminal Application, the Applicants seek
quashing and setting aside of the Criminal Case No.488 of 2013
pending before the learned Judicial Magistrate, First Class, 6th Court,
Kalyan arising out of C.R.No.I-214/2012 registered with Vishnu
Nagar Police Station, Dombivali for the offences punishable under

Sections 498A, 323, 504, 506 read with 34 of IPC. The said FIR is arising out of matrimonial disputes between the Applicant No.1 and the Respondent No.1 herein. The Applicant No.1 and the Respondent No.1 herein were before the Family Court in matrimonial proceedings being Petition No.A-514 of 2013 which was filed by the Respondent No.1 for divorce under Section 13(1) (a) of the Hindu Marriage Act, 1955. In the said Petition, parties were referred to the marriage counsellor for counselling. Before the marriage counsellor , parties arrived at a settlement which was reduced into a writing dated 30.7.2015. In terms of the said settlement, parties had agreed to divorce by mutual consent. In the context of the present application, clause (6) of the terms and conditions for divorce by mutual consent which was arrived at between the parties is material and is re-produced hereunder:

“6. Petitioner has lodged a criminal case against respondent and his family members which is pending before J.M.F.C. Court, Kalyan. Petitioner undertakes before the court that she shall not prosecute further in above said criminal matter and also she shall extend her co-operation to quash the criminal proceeding. Respondent shall apply the Hon'ble High Court for quashing the said criminal case and Petitioner shall

give her no objection for quashing the said criminal case.”

In terms of the said settlement, the Petition filed by the Respondent No.1 herein was converted to one under Section 13(B) of the Hindu Marriage Act, 1955, i.e, divorce by mutual consent. The said Petition came to be allowed and consequently, the marriage solemnised between the parties on 26.4.2017 came to be dissolved by the decree of divorce by mutual consent. The said judgment of the learned Judge of the Family Court No.2 is dated 30.7.2015. It is in terms of the settlement which was arrived at between the parties as evidenced by the terms and conditions for divorce by mutual consent, that the instant Criminal Application has been filed for quashing of the proceedings arising out of the FIR lodged by the respondent no.1 with Vishnu Nagar Police Station, Dombivali. None appears for the Respondent No.1 though notice dated 5.7.2016 is served on the Respondent No.1. The learned counsel appearing on behalf of the Applicants would submit that in the light of settlement arrived at between the parties as also, having regard to the fact that the Trial Court has decreed the Petition filed for divorce by mutual consent, the instant proceedings pending before the learned JMFC, Kalyan would have to be quashed and set aside. The learned counsel

would further draw this Court's attention to the fact that the Respondent No.1 is re-married which fact he seeks to buttress by the invitation card to which the learned counsel for the Applicants seeks to draw our attention. Reading of the invitation card, therefore, discloses that the Respondent No.1 has got married to one Sumeet Dwarkaprasad Mangaliwala on Saturday, 3.12.2016.

3 Be that as it may, having regard to the facts as aforesaid, namely, the settlement arrived at between the parties as evidenced by the terms and conditions of divorce by mutual consent, decree passed by the Family Court dissolving the marriage between the Applicant No.1 and the Respondent No.1 no useful purpose would be served by keeping the proceedings pending. There is therefore no impediment for quashing and setting aside the said proceedings having regard to the judgment of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in (2012) 10 SCC 303 would also lead to the same conclusion. No useful purpose would therefore be served in keeping

the proceedings pending. Hence, the above Criminal Application is accordingly allowed and made absolute in terms of prayer clause (a).

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)