

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1260 OF 2017

1. Nipul Chandravadan Panchal,
Age 40 years, Occ: Architect
2. Mrs. Neela Chandravadan Panchal,
Age 63 years, Occ: Housewife
3. Chandravadan Panchal,
Age 70 years, Occ: No

Residing at 302, Mary Anne Heights,
3rd Road, GPS III, Opp: Cafe-Coffee Day,
Santacruz (East), Mumbai-400 055.

.... Petitioners

- Versus -

1. The State of Maharashtra
2. Mrs. Vaishali Nipul Panchal,
Age 36 years, Occ: Service,
R/a Room No.7, Building No.1,
Kangra Bhavan, 232, Dr. Anny
Besent Road, Opp: Potdaar
Hospital, Warli, Mumbai.

.... Respondents

Mr. P.R. Yadav i/by Ms Priyanka Dubey for the
Petitioners.

Dr. F.R. Shaikh, APP, for the Respondent-State.

Mr. D.V. Saroj for Respondent No.2.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 07, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents waive service. By consent, rule is made returnable forthwith and the petition is taken up for final disposal.

2. The complainant Vaishali is present in Court. She admits that on 4-6-2015 her statement was recorded by the concerned police station, namely, Vakola Police Station, Mumbai and an FIR was registered. The FIR No.254/2015 alleges offences punishable under Sections 498A, 406, 341, 504, 323 and 34 of the Indian Penal Code.

3. A request is made by the accused including the husband of the respondent/original complainant to quash this FIR.

4. The only contention raised in support of this petition

is that, this is a fall out of a matrimonial dispute. That discord and dispute led to the husband approaching the Family Court at Bandra, Mumbai with a petition seeking divorce. That petition bearing No.A-1425 of 2015 was later on sought to be converted into a petition and a joint one. The relief was altered to that of a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955.

5. Our attention has been invited to the Consent Terms tendered in the Family Court and the altered Consent Terms. Pages 77 to 84 of the paper-book have been perused by us carefully. One of the clauses in the Consent Terms postulates that the sum deposited in the account and mentioned in the Terms cannot be withdrawn by the complainant/wife unless she agrees to quashing of this criminal proceedings.

6. The nature of this settlement and which *prima facie* appears to us to be one sided, compelled us to call upon the Advocate appearing for the second respondent/complainant to request her to remain present.

7. She has remained present and has tendered an affidavit confirming the above arrangement.

8. She says that she is completely familiar and can speak and equally read and write in English language. She has perused the affidavit. That is drafted as per her instructions and reflects the position correctly.

9. Though she is not aware of the legal proceedings and provisions, we have sufficiently clarified to her that the affidavit being tendered on record and the prosecution being quashed on the ground that it is purely a private one arising out of a strained matrimonial relationship, then, she would have waived her rights which she has as wife and stated to be voluntarily. We called upon her and repeatedly, whether this arrangement and as reflected in the affidavit is arrived at willingly and her consent is free and unequivocal.

10. This query was raised by us especially because there are rights of a child, a minor son at the relevant time aged eight

years. The custody of this minor son is handed over to the wife. The mother is now going to fend for herself in a City like Mumbai with only a sum of Rs.84 lakhs, that too deposited in the Bank account and as permanent alimony. The same is full and final settlement for all claims of the wife/mother including for permanent alimony. No separate amounts are provided for the child as well.

11. Upon our limited questioning, she says that she wants an end to all these proceedings and desires to resume her life with her son. She wants nothing more from the in-laws or the husband.

12. Once she repeatedly says that she is agreeable to the criminal prosecution being quashed and with the above understanding as well, then, we have no alternative but to quash this criminal prosecution which is a fall out of a dispute between the husband and wife, a direct impact after the complaint for domestic violence was lodged, the husband's petition for Divorce. Then going by this settlement and which is confirmed,

we allow the petition. Rule is made absolute in terms of prayer clause (a). No order as to costs.

13. The consequence being not only the FIR is quashed but even the criminal case and charge-sheet which is filed in the Court of the Metropolitan Magistrate, 71st Court, Bandra, Mumbai.

14. However, since the complainant/wife says that in the interest of her child as also on account of her lack of faith, trust and love for the husband, the criminal prosecution should be quashed and she is ready for the same, in the event the Family Court's jurisdiction under Section 26 of the Hindu Marriage Act, 1955 r/w Section 114 of the Code of Civil Procedure, 1908 is invoked for variation or modification of the Terms and particularly the clause for payment, our order passed today quashing the criminal prosecution shall not be an impediment for the Family Court to exercise its jurisdiction and in accordance with law. Clarifying thus, the petition is allowed.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)