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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.992 OF 2009**

Dr. Vayusen V. Thorat and Ors. ... Petitioners

Vs.

Trupti Vayusen Thorat and Anr. ... Respondents

Mr. Rahul S. Kate for the Petitioners.
Mr. K.V. Saste, APP for the Respondent No.2.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 27th JANUARY, 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1 By this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the prayer is for quashing the FIR registered at the instance of the first respondent. The first respondent and the first petitioner were husband and wife. The First Information Report was registered on 6th March, 2009 at the instance of the first respondent alleging commission of offences punishable under Sections 498A, 406 read with Section 34 of the Indian Penal Code. The second and third petitioners are the parents of the first petitioner.

2 In support of the Petition for quashing, the learned counsel appearing for the petitioners invited our attention to a Petition under Section 13B of the Hindu Marriage Act, 1955 (for short “the said Act”) presented by the first petitioner and the first respondent on 2nd May, 2008 before the learned Civil Judge, Senior Division at Karad. By the said Petition, a decree was sought by mutual consent. It appears that the said Petition was placed before the Lok Adalat on 18th January, 2009. Even before the Lok Adalat, the first respondent agreed for settlement. On the basis of the said settlement, a decree was passed in the said Petition dissolving the marriage between the first petitioner and the first respondent by a decree of divorce under Section 13B of the said Act.

3 The learned counsel appearing for the petitioners submitted that lodging of FIR after the decree of divorce under Section 13B of the said Act amounts to abuse of process of law. He invited our attention to the averments made in the joint Petition filed by the first petitioner and the first respondent in the Court of Civil Judge, Senior Division. He also pointed out that in terms of clause 5 of the said Petition, a sum of Rs.50,000/- has been invested by the first petitioner for the benefit of the first respondent and minor child. A copy of the

Fixed Deposit receipt is annexed to the Petition. None appears for the first respondent. The learned APP appears for the second respondent who has supported the impugned FIR.

4 We have perused the statements made in the impugned FIR. In the FIR, the first respondent has claimed that from 4th March, 2009 she was not allowed to move out of the matrimonial home. She has further stated that by deceiving her, the first petitioner took her to the Lok-Adalat and got an Advocate appointed for her and obtained signatures on the consent terms.

5 As stated above, H.M. Petition No.57 of 2008 was jointly filed by the first petitioner and the first respondent on 2nd May, 2008 in the Court of Civil Judge, Senior Division. As stated earlier, the first respondent appeared before the panel of Lok-Adalat on 18th January, 2009 when the parties agreed to obtain divorce by mutual consent. We have perused the Roznama of the proceedings of H.M. Petition No.57 of 2008. It shows that the first respondent was the second petitioner therein. She was represented by a lawyer in the said Petition.

6 The first respondent could have challenged the decree passed under Section 13B. However, the said decree is not challenged.

It is vaguely stated in the statement recorded before the Police that her signature was obtained by the first petitioner by deceiving her.

7 In our view, registration of the FIR in the facts of the case, is nothing but abuse of process of law especially in the light of the fact that the first respondent has not challenged the decree of divorce by mutual consent. Hence, this is a fit case where power under Section 482 of the said Code should be exercised.

8 Hence, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (b) which reads thus :-

“(b) Complaint bearing C.R.No.82 of 2009 registered with Karad City Police Station against the petitioners may kindly be quashed and set aside.”

- (ii) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)