

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1406 OF 2016

Sanket Hemant Sanghvi and Others. .. Petitioners
Vs
The State of Maharashtra and Others. .. Respondents

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Shri Prem Keshwani for the Petitioners.
Shri K.V. Saste, APP for the Respondent Nos.1 and 2.
Shri Hemang A. Jariwala i/b Auroma Law for the Respondent No.3.
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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ
DATED : 15TH FEBRUARY 2017

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

1. Rule. The learned APP waives service for the first Respondent. The Advocate for the second Respondent waives service. Forthwith taken up for final disposal.

2. The prayer in this Petition under Article 226 of the Constitution of India is for quashing and setting aside the criminal proceedings pending before learned Additional Chief Metropolitan Magistrate, Girgaum, Mumbai. The First Information Report (FIR) was registered at the instance of the third Respondent for the offences punishable under Sections 403, 406, 417, 418, 420, 498-A read with 34 and Section 506 read with 109, 507, 509 read with 109 and 114 of the Indian Penal Code on the basis of an order made by the learned

Metropolitan Magistrate under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The first Petitioner and the third Respondent are husband and wife. The second and third Petitioners are parents of the first Petitioner. The consent terms duly signed by the second and third Petitioners and the third Respondent as well as their respective Advocates are placed on record. The original Special Power of Attorney dated 6th February 2017 executed by the first Petitioner appointing the second Petitioner as his Constituted Attorney is also placed on record. The Special Power of Attorney has been executed before a Notary Public in Georgia, U.S.A. We may note here that the original consent terms have been signed by the second Petitioner as the Constituted Attorney of the first Petitioner.

3. The consent terms record the settlement of the matrimonial dispute between the first Petitioner and the third Respondent. The bankers' cheque in the sum of Rs.10 lakhs drawn in favour of the third Respondent on UCO Bank is handed over by the learned counsel appearing for the Petitioners to the learned counsel appearing for the third Respondent who has accepted the same. The cheque is handed over to the third Respondent by her Advocate in open Court. This amount is paid in terms of the Clause (8) of the consent terms in full and final settlement of all the claims of the third Respondent with respect to stridhan, maintenance, alimony, etc.

4. The learned counsel appearing for the Petitioners and the learned counsel appearing for the third Respondent state that the first Petitioner and the third Respondent (who is personally present in the Court) have agreed to apply to the Family Court at Bandra, Mumbai, for conversion of the pending Petition No.A-1958 of 2016 into a Petition under Section 13B of the Hindu Marriage Act, 1955 (for short “the said Act”). We accept the said statement. Both the first Petitioner and the third Respondent through their respective counsel undertake that they will not withdraw their respective consent for grant of divorce under Section 13B of the said Act.

5. In view of the consent terms, the third Respondent has no objection for quashing the criminal proceedings. Perusal of the FIR shows that it is the matrimonial dispute between the first Petitioner and the third Respondent which led to the registration thereof. As reflected from the consent terms, now there is a complete settlement of the matrimonial dispute. Therefore, the continuation of the criminal proceedings will cause undue harassment to both the parties. Therefore, this is a fit case to exercise the powers under Section 482 of the CrPC. Therefore, the law laid down by the Apex Court in the decision in the case of *Gian Singh v. State Bank of Punjab*¹ will squarely apply.

1 (2012) 10 SCC 303

6. Accordingly, we pass the following order.

ORDER :

- (a) The statements and undertakings of the first Petitioner and the third Respondent which are recorded as above are accepted. The statements and the undertakings in the consent terms tendered on record and marked "X2" for identification are accepted;
- (b) We direct the first Petitioner and the third Respondent to make an Application in the pending Petition No.A-1958 of 2016 before the Family Court at Bandra, Mumbai, for conversion of the same into a Petition under Section 13B of the Hindu Marriage Act, 1955. Such Application shall be made within a period of two weeks from the date on which a copy of this order is uploaded;
- (c) As the first Petitioner is abroad, it will be open for the second Petitioner to sign the Application on the basis of the Special Power of Attorney dated 6th February 2017;

- (d) On such Application being made, the learned Judge of the Family Court, Bandra, Mumbai shall pass a formal order permitting amendment. After the amendment is carried out, the same shall relate back to the institution of the pending Petition;
- (e) Rule is made absolute in terms of prayer clauses (a), (b) and (c), which read thus;
- “(a) The complaint vide C.C.No.1417/SW/2015 filed before the Addl.Chief Metropolitan Magistrate, 4th Court, Girgaum, Mumbai under sections 403, 406, 417, 418, 420, 498-A r/w 34 and 506 r/w 109, 507, 509 r/w. 109 and 114 of the IPC, be quashed;
- (b) The order directing the police to investigate the complaint under section 156(3) of Cr.P.C., be quashed;
- (c) The FIR registered by the Officers of V.P. Road Police Station vide MECR No.07 of 2015 under sections 403, 406, 417, 418, 420, 498-A, 506, 507 and 509 r/w. 109, 34 and 114 of the IPC, be quashed.”
- (f) The Registry shall return the original Power of Attorney annexed to the consent terms to the Advocate for the Petitioners on production of a true photocopy thereof;

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

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)