THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 416 OF 2016

Sanjay Madhav Borhade & Ors. ..Applicants

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. M.H.Mulla i/b. Mr. Prakash Kumar for the Applicant
Mr. Rupesh Lanjekar i/b. Mr. Sameer Nangre for the Respondent No.2.
Dr.F.R. Shaikh, APP for the Respondent/State.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 24TH FEBRUARY, 2017

P.C.

1. Notice of final disposal is already issued on 25th August, 2016. Accordingly, the petition is taken up for final disposal. The prayer is for quashing the proceedings of a criminal case against the petitioners where the offences alleged are under Sections 498A, 406, 506(ii) read with Section 34 of the Indian Penal Code. The first Applicant and the second Respondent were husband and wife. The second Respondent is the First Informant. The second Applicant is the mother of the first Applicant and the third Applicant is the

brother of the first Applicant.

2. In Petition No. B-133 of 2008 and C-87 of 2012 filed by the second Respondent against the first Applicant before the Family Court, Consent terms were filed on 30th January, 2015 before the Marriage Counselor recording the statement of the matrimonial dispute between the first Applicant and the second Respondent. One of the terms therein is that the second Respondent will co-operate for quashing the present criminal proceedings.

3. On the basis of the Consent terms filed before the Marriage Counselor, Petition No.A-547 of 2009 filed by the first Applicant before the Family Court, Mumbai at Bandra seeking a decree of divorce was converted into a petition under Section 13(B) of the Hindu Marriage Act, 1955. By judgment and decree dated 10th February, 2016 the said Petition has been decreed and the marriage between the first Applicant and the second Respondent has been dissolved by a decree of Divorce under Section 13B of the Hindu Marriage Act, 1955. The consent terms are made a part of the

decree.

4. The second Respondent by filing an affidavit has accepted that there is a decree of divorce passed and that she has no objection for quashing the offence in view of the settlement.

5. It is the matrimonial dispute between the first Applicant and the second Respondent that led to the registration of an offence. Now there is a complete settlement of the matrimonial dispute and based on the said settlement, a decree of divorce has been passed. Hence, continuation of proceeding against the applicant will be unjust and will cause undue harassment to the Applicants as well as to the second Respondent.

6. Accordingly, in the light of the decision of the Apex Court in Gyan Singh vs. State of Punjab[1], a case is made out for quashing the criminal proceeding. Accordingly, we pass the following Order:-

i) Rule is made absolute in terms of prayer clause (a) which reads

1 (2012) 10 SCC 303

thus:-

> "a) This Honourable Court be pleased to quash and set aside and acquit the Applicants in Criminal Case No. 1918/PW/2012, same is pending before the Honourable 71st Metropolitan Magistrate Court at Bandra, Mumbai."

ii) All concerned to act on an authenticated copy of this Order.

(ANUJA PRABHUDESSAI, J.) **(A.S.OKA, J.)**