

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1542 OF 2016

Anupkumar Lalji Mishra

.....Petitioner

V/s.

Rachana Anup Mishra

and anr.

.....Respondents

Mr. M.K. Kocharekar i/by. Mrs. Vrishali Raje, Advocate
for the petitioners.

Mr. Sandeep Mishra, Advocate for respondent no.1.

Mr. S.D. Shinde, APP for respondent no.2, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

8TH AUGUST, 2017.

P.C. :-

1. The above writ petition filed under Article 226 of the Constitution of India seeks quashing of the FIR bearing C.R. No.I-551 of 2015 registered with Vartak Nagar Police Station, Thane for the offences punishable

under Sections 498A, 406, 323, 504 read with Section 34 of the Indian Penal Code. Petitioner no.1 and respondent no.1 are husband and wife respectively. The filing of the said FIR was out of the matrimonial dispute between the parties.

2. The parties were referred to mediation pursuant to the order passed by the Apex Court in Transfer Petition (Civil) No. 1838 of 2015. The parties had reached an amicable settlement before the Learned Mediator, Mrs. Shubhangi Barve which settlement has been reduced into writing. In the context of the relief sought in the present petition, Clause-1 and Clause-5 of the settlement assume importance and are reproduced hereinabove.

“1) The petitioner and the Respondent have agreed to have, “Divorce”, by filing mutual consent petition”.

“5) Both the Petitioner and the Respondent has agreed to withdraw simultaneously, all the cases filed against each other in court of law of India, as follows :-

- a) Respondent will withdraw Petition of Judicial Separation No. 2004/2015 filed at Jaipur.
- b) The Respondent will also withdraw Defamation Case No.3242/2016 filed at Dist. Court, Thane.
- c) The Petitioner will withdraw Domestic Violence Case No. 47/2016 filed at JMFC Court, Belapur will cooperate to quash case No.I-551/2011 u/s, 498A, at Thane.
- d) The Respondent will ask his sister Mrs. Kavita Tripathi to withdraw case filed at Dist Protection Officer at Varanasi, as she is a party in D.V. Act and 498-A.”

3. Respondent no.1 has also filed her affidavit. In para-8 of the Affidavit, she has stated to the following effect :-

“8. I say that as per the “Points of Settlement” dated 24/11/2016, I have no objection if the Hon'ble Court quash the C.R. No.I-551 of 2015 dated 7/10/2015 registered at Vartak Police Station, District-Thane, against the petitioners, subject to compliance of “Points of Settlement” dated 24/11/2016 on the part of petitioner no.1 and his family members.”

Hence, respondent no.1 who is the first informant has no

objection for quashing of the FIR lodged by her in the Vartak Nagar Police Station, Thane.

4. The Learned Counsel for the parties, state that in terms of Clause-1 of the settlement before the Mediator, the parties have filed the petition under Section 13 of the Hindu Marriage Act for divorce by mutual consent and that both the Learned Counsel assure the Court that appropriate order for divorce by mutual consent would be obtained by them. The Learned Counsel appearing for respondent no.1 also states that, respondent no.1 has withdrawn the case filed by her under the Domestic Violence Act from the Court of the Judicial Magistrate First Class, Vashi. Hence, the aforesaid facts indicate that, the parties have acted upon the settlement which has been arrived at before the Learned Mediator.

5. In terms of the law laid down by the Apex Court in **Madan Mohan Abbot V/s. State of Punjab**, reported in (2008) 4 SCC page 582, there is now no

warrant to keep the criminal case pending as no useful purpose will be served by the same. Having regard to the judgment of the Apex Court in **Narinder Singh V/s. State of Punjab, reported in (2014) AIR SCW page 2065**, it would be just and proper to quash and set aside the FIR in question registered with Vartak Nagar Police Station, Thane. The petition is therefore allowed in terms of prayer clause (a) and is accordingly disposed of.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)