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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1584 OF 2016

Amalan Mutchhaya Alibaba and Anr.	... Petitioners
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. G. Geetha i/by Ms. Sartaj Shaikh for the Petitioners.
Ms. R.M. Gadhvi, Additional Public Prosecutor for the Respondent No.1.
Mr. Prem Pandey for the Respondent No.2.

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

DATE : 14th MARCH, 2017

PC.

. **Not on board. Taken on board.**

1 Heard the learned counsel appearing for the petitioners.
Rule. The learned APP waives service for the first respondent. The learned counsel appearing for the second respondent waives service. Forthwith taken up for final disposal. The prayer in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is for quashing the charge sheet filed for the offences punishable under Sections 366 read with Section 34 of the Indian Penal Code. The FIR is registered at the instance of the second respondent. She has alleged that on 11th February, 2014 the first petitioner forced her to marry with him.

2 Today, an affidavit is tendered across the Bar by the second respondent which is affirmed on 7th February, 2017. To the said affidavit, a true copy of the judgment and order dated 8th November, 2016 passed by the learned Judge of the Family Court No. 6, Mumbai in a Petition No.F-524 of 2016 has been annexed. It shows that the first petitioner and the second respondent have filed the said Petition as a joint petition under Section 13B of the Hindu Marriage Act, 1955. Perusal of the judgment shows that the Family Court made an endeavour for reconciliation and after the said attempt failed, the matter was taken up for final disposal. By the said judgment and order, the learned Judge of the Family Court proceeded to dissolve the marriage between the first petitioner and the second respondent.

3 Perusal of the FIR shows that the second respondent was not disputing the factum of marriage but was disputing the legality of the marriage on the ground that she was forced to get married. Thereafter, the second respondent and the first petitioner on 21st January, 2016 filed the aforesaid Petition in the Family Court for seeking a decree of divorce by mutual consent under Section 13B of the said Act. Therefore, the second respondent accepted the legality and validity of the marriage. In fact the marriage has been dissolved by a

decree of divorce under Section 13B of the said Act. Therefore, continuation of prosecution will not serve any fruitful purpose. The chances of conviction are bleak. The matrimonial dispute between the first petitioner and the second respondent has been completely resolved by the decree of divorce. Therefore, this is a fit case to exercise powers of this Court under Section 483 of the Code of Criminal Procedure, 1973. Accordingly, we pass the following order :-

ORDER

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

(b) That this Hon'ble Court be pleased to quash Chargesheet vide S.C. No.146 of 2015 pending before the Ld. Sessions Judge at Dindoshi, Mumbai vide C.R.NO.168 OF 2014 filed by the Respondent No.2 at Samata Nagar Police Station for alleged offences punishable under section 366, 34 of IPC against the Petitioners on such terms and conditions as this Hon'ble Court may deem fit and proper.

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

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)