

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 378 OF 2013
Shankarlal Kedia and Others. ..Petitioners.
Versus
State of Maharashtra & Another. ..Respondents.

with
WRIT PETITION NO. 2227 OF 2017
Sandip Shankarlal Kedia. ..Petitioners.
Versus
State of Maharashtra & Another. ..Respondents.

Mr. N. S. Mundargi i/b Pawan Patil for the Petitioner.
Mr. K. V. Saste, APP for the State.
Mr. Prakash Mahadik for Respondent No. 2.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.
Date : **June 14, 2017.**

P. C. :

1. Heard Mr. Mundargi, the learned Counsel appearing for the Petitioner, Mr. Mahadik, the learned Counsel appearing for the Respondent No. 2 and Mr. Saste, the learned APP for the State.
2. Writ Petition No. 378 of 2013 is filed by the in-laws and Writ Petition No. 2227 of 2017 is filed by husband of complainant, who is impleaded as Respondent No. 2 in both the petitions. On the basis of 2nd respondent's complaint, FIR bearing No. 263 of 2012 was registered with Amboli Police Station for the offence punishable under sections 406 and 498A read with 34 of the Indian Penal Code, 1860.

3. The matrimonial discord between the parties gave rise to filing of several civil as well as criminal proceedings and some of the proceedings went upto the Hon'ble Supreme Court, which are as follows :

- 1] Civil Appeal No. 11496 of 2016 (@SLP (C) No. 17561 of 2013)
- 2] Conmt. Pet. (C) No. 311 of 2013 in SLP(C) 17561 of 2013.
- 3] Conmt. Pet. (C) No. 440 of 2013 in SLP(C) 17561 of 2013.
- 4] Conmt. Pet. (C) No. 109 of 2014 in SLP(C) 17561 of 2013.
- 5] Conmt. Pet. (C) No. 457 of 2014 in SLP(C) 17561 of 2013.
- 6] Civil Appeals Nos. 11726-11727 of 2016(@SLP (C) Nos.35666-35667 of 2016
- 7] Civil Appeals No. 11725 of 2016 (@SLP (C) No. 12496 of 2015
- 8] Civil Appeal No. 11724 of 2016 (@SLP (C) No. 11829 of 2015.

4. The parties at the intervention of the friends, well-wishers and relatives settled their disputes amicably and accordingly filed mutual consent terms in the Hon'ble Supreme Court in aforementioned proceedings. The Supreme Court accordingly disposed of those proceedings in terms of the mutual consent terms by passing following order :

“CIVIL APPEAL No. 11496 OF 20016

Heard learned counsel for the parties.

The parties have settled tgheir disputes amicably and have filed the consent terms. The consent terms are signed by the parties. Accordingly, learned counsel for the parties have filed joint application for disposal of the appeal in terms of signed and

affirmed mutual settlement dated 08.02.2017.

Both the parties, namely, Pooja Kedia and Sandip Shankarlal Kedia are present in Court. They state that they have entered into settlement dated 08.02.2017 on their own sweet will and have signed the terms of the said settlement.

The modification of the consent terms vide paragraph 3 of the joint application dated 05.04.2017 is allowed.

Accordingly, the disputes between the parties are directed to be finally settled in accordance with the consent terms of settlement dated 08.02.2017 (along with annexures) and modification vide paragraph 3 of the application dated 05.04.2017, which shall form part of the order.

Ordered accordingly.

The civil appeal is disposed of.

CONMT. PET. (C) NO. 440 OF 2013 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 311 OF 2013 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 109 OF 2014 IN SLP(C) 17561 OF 2013.
CONMT. PET. (C) NO. 457 OF 2014 IN SLP(C) 17561 OF 2013.
CIVIL APPEALS NOS. 11726-11727 OF 2016
CIVIL APPEALS NO. 11725 OF 2016
CIVIL APPEAL NO. 11724 OF 2016

In view of the order passed above, these appeals and contempt petitions are also disposed of in the same terms and directions.”

5. In terms of the consent terms, parties have approached this Court for quashing the subject FIR, by consent. The learned Counsel invited our attention to sub-clauses (a) and (b) of clause VIII of the consent terms, which deal with the withdrawal of allegations and cases. Those sub-clauses read thus :

VIII) WITHDRAWAL OF ALLEGATIONS AND CASES

a) the Petitioner and the Respondent and all their family members and friends shall unconditionally withdraw within

15 days upon signing of present consent terms and passing of the decree of divorce in terms of the present consent term, all allegations, cases, complaints, proceedings etc. whatsoever, levelled against each other and their friends, family members, relatives and their companies, in any Court of law and/or before any authority, forum, Passport Authority, etc., whatsoever, in India, Dubai and anywhere in the world. That after putting hands and signing of both the parties on the present consent terms and passing of the decree, all civil and criminal cases, or any other cases, complaints, proceedings, whatsoever, shall be withdrawn (compounded, quashed, dismissed) by the Petitioner and her other family members and friends against the Respondent, Mr. Sandip Kedia, his other family members and their companies and vice-versa and or shall get it quashed by both the parties by approaching Hon'ble High Court or concerned Police Station or authorities, forums and/or by way of a joint petition and /or affidavits. All criminal cases, custody petition, family Court cases, cases pending with metropolitan magistrate, City Civil and Sessions Court, High Court, Supreme Court and also all allegations levelled, cases, complaints, proceedings etc whatsoever filed by either parties in any of the Court of law at Dubai or any other Court of law in India or elsewhere shall stand withdrawn and /or dismissed as against the other party and their companies and both the parties shall have no objection, whatsoever, for withdrawing it unconditionally, and further, getting it quashed from the Hon'ble High Court and Dubai Court or any other forum. Even if either of the party or their representative is not present before the Hon'ble Court or forum, the complaint, cases, proceedings etc whatsoever shall stand withdrawn and quashed with implied consent of either party after passing of the decree; That all allegations leveled, cases, complaints, proceedings etc, whatsoever, in India or Dubai or elsewhere, before any forum, police, commission, authority, etc., whatsoever, whether, civil or criminal shall become nullity, void ab initio and as good as no complaint and or cases being made or pending and shall stand withdrawn / quashed after passing of the

decree. That the affirmed affidavits of the friends and relatives of both parties are annexed herewith which shall be treated as part and parcel of the present 'consent terms' and the decree. Copies/ drafts of the said affidavits are enclosed herewith as Annexure 2 and the originals of the said affidavits shall be tendered by both the parties to the Hon'ble Supreme Court of India within 4 days of filing of these settlement terms. The necessary board resolution of Basic Finvest Pvt Ltd. is enclosed as Annexure 3.

b) Both the parties shall provide a detailed list of all complaints, cases, proceedings, etc, whatsoever, (civil, criminal, matrimonial etc.) filed by each of them or their friends relatives till today with all the authorities and court/forums in India and Dubai or elsewhere, which shall become null and void, void ab initio and nullity on passing of the decree. Inadvertently, if any of the cases or complaints or proceedings before any forum, authority, Courts, police stations etc. are missing in either of the list given by the parties to each other, the same shall also stand withdrawn, null and void and quashed and the said authority or Court of law shall treat the same proceedings etc. as settled between the parties as per the present consent terms and decree by Hon'ble Supreme Court of India. The list of such cases / complaints in Dubai and India are enclosed herewith as Annexure 4.”

6. The reading of theses clauses make it unequivocally clear that parties agreed to unconditionally withdraw the cases including the subject FIR and this can be done even in the absence of the parties as they are residing at Dubai. Annexure 4 to the consent terms gives the list of cases filed by both the parties. Subject FIR finds reference in this list of the cases. Annexure 3 to the consent terms is

the resolution dated 20th April 2016 filed by the Basic Finvest Pvt Ltd. By this resolution, the company resolved to withdraw criminal cases filed against Omega Securities & Financial Services Pvt. Ltd., Mr. Sandip Kedia, Mr. Sankarlal Kedia and Mrs. Pushpa Kedia in Cuffe Parade Police Station and Amboli Police Station.

7. Page No. 39 of the consent terms is an affidavit by Mr. Vikash Berlia. In clause (2) of the affidavit he has stated that he unconditionally withdraws allegations, cases, complaints whatsoever made to authorities, forums, police stations, Courts, etc. whatsoever against Mr. Sandip Sankarlal Kedia. In clause (4) of the affidavit he has further averred that all the allegations, cases, complaints, proceedings etc. whatsoever as mentioned in clause (2) and (3) shall be treated as null and void, void ab initio, and nullity with immediate effect.

8. From the facts mentioned hereinabove it is absolutely clear that parties have settled their disputes before the Apex Court and filed mutual consent terms and the Apex Court disposed of the proceedings referred to in paragraph No.3 above in terms of the mutual consent terms. In these mutual consent terms parties agreed to withdraw the cases filed against each other, including the subject cases. Even the presence of the parties is not necessary and implied consent of the complainant is to be presumed. Be that as may,

however, parties are represented by the Advocates and they submit that both the petitions be allowed and subject FIR be quashed.

9. In above fact-situation, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

10. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject FIR. In the light of above, Writ Petition 2227 of 2017 is made absolute in terms of prayer clause (b) and Writ Petition No. 378 of 2013 is made absolute in terms of prayer clause (b).

11. In view of the disposal of above writ petitions, application if any, taken out in these writ petitions does not survive and the same is accordingly disposed of.

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]