

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

CRIMINAL WRIT PETITION NO.2356 OF 2017

Nilesh Suresh Mhatre & Ors.

.... Petitioners

versus

The State of Maharashtra & Anr.

... Respondents

.....

- Mr.Rahul Arote, Advocate for the Petitioners.
- Ms.S.D. Shinde, APP for the State/Respondent.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE : 05th JULY, 2017.**

P.C. :

1. Mentioned for production. Taken up on board of production.
2. Heard the learned counsel for the applicant, respondent No.2 and learned APP.
3. The petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside the order of conviction dated 18/07/2013 passed by the learned

J.M.F.C. Pen in Regular Criminal Case No.114/10. This case arises out of FIR No.81/10, registered with Pen Police Station, against the petitioners at the instance of respondent No.2 for the offences punishable u/s 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code.

4. The petitioner No.1 and the respondent No.2 got married on 29/12/2008. The petitioner Nos.2 and 3 are the parents of the petitioner No.1. The matrimonial dispute between the parties resulted in registration of the subject FIR. After investigation the charge-sheet was filed before the learned Judicial Magistrate First Class, Pen, which was numbered as Regular Criminal Case No.114/10 . The petitioners were charged for the offences punishable u/s 498-A of the Indian Penal Code. The learned J.M.F.C. Pen by the judgment and order dated 18/07/2013 convicted the petitioners for the offence u/s 498-A r/w 34 of IPC and were sentenced to suffer simple imprisonment of six months and fine of Rs.5,000/- each. The petitioners have challenged this order by filing appeal

before Sessions Court at Alibaug, Raigad being Criminal Appeal No.139/13. It is reported that the same is pending.

5. During the pendency of the said appeal, the parties with the help of well-wishers, family relatives and friends, resolved their disputes amicably and in pursuance of an understanding arrived at between them, have approached this Court for quashing and setting aside the petitioners' conviction awarded by the learned J.M.F.C., Pen, Regular Criminal Case No.114/10.

6. The respondent No.2 has filed an affidavit dated 03/05/2017. The affidavit discloses that parties have agreed to take divorce by mutual consent. The petitioner No.1 has also agreed to pay the respondent No.2 an amount of Rs.5,50,000/- (Rupees Five lakhs and Fifty thousand only), towards full and final settlement of her claim. In paragraph No.5 she has stated that in view of the settlement and compromise between the parties, she has no grievance if the order of conviction against the applicants passed by the learned J.M.F.C., Pen, in R.C.C. No.114/10 is quashed and set aside.

7. The respondent No.2 is personally present before the Court. On being questioned, she specifically stated that she has gone through the affidavit and has fully understood the contents thereof and has no objection, if the subject proceedings are quashed and the order of conviction is set aside. The respondent No.2 has also acknowledged the receipt of the full and final payment of Rs.5,50,000/- (Rupees Five lakhs and Fifty thousand only). The petitioner No.1 is also present in the Court. He has stated that he will cooperate with the respondent No.2 for dissolving their marriage by mutual consent. The statement is accepted.

8. It is true that the petitioners have approached this Court after their conviction by the trial Court for an offence punishable u/s 498-A r/w 34 of IPC. The petitioners in this regard relied on the decision of Division Bench in the case of *Kiran Tulshiram Ingale, versus, Smt. Anupama P. Gaikwad & Ors, reported in 2006 Cri.L.J. 4591*, to contend that even after conviction also this Court can quash the criminal proceedings. Having gone through the said decision, we find that the submissions of the petitioners are supported by the said decision.

9. It can, thus, be seen that the matter has been amicably settled between the parties. Perusal of the complaint, makes it clear that the allegations are totally personal in nature. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of *B.S. Joshi vs. State of Haryana* *AIR 2003 SC 1386*, we are of the view that quashing of the FIR would be in the interest of respondent No.2. Besides, no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the judgment and order of conviction dated 18/07/2013 passed by the learned J.M.F.C. Pen in Regular Criminal Case No.114/10 is quashed and set aside. Since the abovementioned order of conviction is set aside, the Appeal No.139/2013 pending before the Sessions Court arising out of the said conviction order has rendered infructuous. The petition is, accordingly, made absolute in terms of prayer clauses (b) & (c).

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)