

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2238 OF 2016**

Mrs. Asha Rajendra Jaiswal

..Petitioner

Vs.

The State of Maharashtra

..Respondent

Mr. R. S. Yadav for the Petitioner

Mr. K. V. Saste Addl. P P for the Respondent No.2

**CORAM :R. M. SAVANT, &
SANDEEP K. SHINDE, JJ
DATE : 11th AUGUST, 2017**

P.C.

1 By the above Criminal Writ Petition, the Petitioner seeks quashing and setting aside of the proceedings being case No.123 of 2012 pending before the Learned Metropolitan Magistrate 26th Court, Borivali, Mumbai. The said case arise out of the FIR filed by the Petitioner under Section 498A, 324, 323, 504, 506(2) read with Section 34 of the Indian Penal Code. The Petitioner and the Respondent No.2 herein were husband and wife and were involved in Marriage Petition No.E-365/2012 which was filed for maintenance by the Petitioner. During the pendency of the said Petition, the parties arrived at an amicable settlement which was reduced into consent terms for settlement before the marriage counsellor of the Family Court on 9-4-2015. In the context of the reliefs sought in the above Criminal Writ Petition clause (6) of the consent terms is material and is reproduced hereinunder:

6. Respondent has agreed to pay Rs.10,15,000/- (Rs. Ten lacs Fifteen Thousand only) to the petitioner towards full and final settlement inclusive of petitioner's claim and one time permanent maintenance for herself and daughter Rani. This amount is also inclusive of arrears of maintenance. Respondent shall deposit the said amount in the Family Court Mumbai within 3 months from filing of mutual consent divorce petition at Family Court Mumbai.

Petitioner can withdraw the said amount only after disposal of criminal case filed by her against respondent and his family members which is pending before the Hon'ble Metropolitan Magistrate Court, Borivali and passing decree of divorce.

2 Hence in terms of clause (6) the Respondent No.2 has agreed to pay Rs.10,15,000/- to the Petitioner towards full and final settlement and the Petitioner is entitled to withdraw the same only after the disposal of the Criminal Case filed by her against the Respondent No.2. Hence the withdrawal of the amount of Rs.10,15,000/- deposited by the Respondent No.2 is contingent upon the criminal proceedings coming to an end.

3 After the said consent terms for settlement were arrived at on 9-4-2015, the parties filed a Petition before the Family Court seeking divorce by mutual consent under Section 13B of the Hindu Marriage Act. In the said Petition, this Court is informed by the Learned Counsel appearing for the Petitioner a decree of divorce by mutual consent came to be passed on 29-2-2016. The Learned Counsel further informs this court that the Respondent

No.2 husband after the said decree has remarried and is settled in life. As indicated above, the Petitioner's right to the said amount of Rs.10,15,000/- which is by way of full and final settlement is only upon the criminal proceedings coming to an end, though the Petitioner is the first informant. The Respondent No.2 is personally present in Court and is identified by Mr. Yadav the Learned Counsel appearing for him.

4 Having regard to the settlement arrived at between the parties and also having regard to the judgment of the Apex Court in the matter of **Gian Singh Vs. State of Punjab & Anr.**¹ and **Narinder Singh & Ors. Vs. State of Punjab & Anr**², there is no impediment in quashing the FIR. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Writ Petition is accordingly disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]

¹ (2012) 10 Supreme Court Cases 303

² 2014 AIR scw 2065