

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.742 OF 2017

Mr. Vinay Suresh Vijan & Ors.Applicants
V/s.
The State of Maharashtra & Ors.Respondents

Mr. Javed Hussein with Mr. Mubashir Hussein i/by Hussein & Co.,
, Advocates for Applicants.
Mrs. M.M.Deshmukh,APP for the Respondent-State.
Mr. S.S.Lotankar, Advocate for Respondent No.2.

**CORAM :- R.M. SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 1ST SEPTEMBER, 2017.

PC. :-

By the above Criminal Application, the Applicants seek quashing and setting aside of the FIR No.266 of 2015 registered with the Bhadrakali Police Station, Nashik for the offences punishable under Sections 498A, 406, 323, 326, 504, 506 and 34 of IPC. The said FIR is arising out of the matrimonial dispute between the Applicant No.1 and the Respondent No.2. Parties were before the Family Court in Matrimonial Petition No.A-1683 of 2015 filed by the Applicant No.1-Vinay for divorce under Section 13(1)(i-a) of the

Hindu Marriage Act, 1955. In the said Marriage Petition, parties arrived at settlement which was reduced into writing by way of Consent Terms which were executed by the parties before the Marriage Counsellor on 27.6.2016. In terms of Clause 2 of the said Consent Terms, the Applicant No.1 and the Respondent No.2 decided to file an application for converting the said Marriage Petition to a Petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955.

2 In the context of the reliefs sought in the above Criminal Application, Clause 8 of the Consent Terms is material and is re-produced herein:

“8 That the Respondent hereby undertake to withdraw the petition/case which is filled before the Family Court at Nashik and cases filed before the Judicial Magistrate at Nashik, under section 498(A) and 34 and case under section Domestic Violence Act against the Petitioner and his family members.”

In terms of the said Consent Terms, the learned Judge of the Family Court No.6, Mumbai decreed the Marriage Petition under Section 13-B of the Hindu Marriage Act, 1955 (i.e. divorce by mutual consent) and thereafter, marriage between the Applicant No.1 and

the Respondent No.2 came to be dissolved. Hence, the Consent Terms and the decree which has been passed by the learned Judge of the Family Court, Mumbai granting the divorce by mutual consent disclose that the parties have amicably settled their disputes.

3 The First Informant has also filed an affidavit dated 18.7.2017 executed before the District Court, Nashik and which bears stamp of the Advocate Umesh Walzade having registration no.MAH/1162/1992 and having his office in Maruti Chambers, District Court Campus, Nashik. Paragraph 10 of the said affidavit is material and is re-produced hereunder:

“10 I say that, since it was mutually agreed between the parties, i.e., the applicant herein and myself to drop the criminal proceedings against the applicant herein, I say that, since I have agreed to file a separate affidavit, stating therein, that I do not wish to pursue the Criminal Proceedings against the applicants and fully supported the contents of the consent terms. I hereby submit that, present affidavit filed by me be taken as my consent and no objection to draw and quash the proceedings as prayed by the Applicants.”

Having regard to the Consent Terms, the decree passed, as also having regard to the affidavit dated 18.7.2017 of the First Informant and in view of the judgment of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC

466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in **(2012) 10 SCC 303** would also lead to the same conclusion. No useful purpose would therefore be served by keeping the proceedings pending. The above Criminal Application is accordingly allowed and made absolute in terms of prayer clause (a).

4 The Applicants to pay a cost of Rs.20,000/- to the Tata Memorial Hospital, Mumbai within a period of eight weeks from date and file receipt for the same in the Registry.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)