

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

CRIMINAL WRIT PETITION NO.3037 OF 2017

Rohit Nitin Minawala and ors. : Petitioners.
Versus
State of Maharashtra and anr. : Respondents.

Mr. Prakash Mahadik for the Petitioners.
Mr. V B Konde-Deshmukh, Addl. PP for the Respondent/State.
Mr. Navin Sachanandani for the Respondent No.2.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 13th September 2017

P.C.

1 Mentioned for being taken out of turn in view of the fact that the quashing is sought by consent.

2 The above Writ Petition has been filed for the quashing the FIR No.7 of 2013 registered with Kandivali Police Station on 08/12/2013 for the offences punishable under Section 498A, 406, 323, 504, 506(2) and 34 of the Indian Penal Code.

3 The Petitioner No.,1 and the Respondent No.2 are husband and wife and the FIR has arisen out of the matrimonial disputes between the parties. The parties were before the Family Court at Mumbai in Petition No.A-1665 of 2016 filed by the Respondent No.2 wife. The said Petition was filed by

the Respondent No.2 – wife for divorce on the ground of cruelty. The parties were referred to the Marriage Counsellor and before the Marriage Counsellor the parties arrived at Consent Terms on 17/06/2017. In the context of the relief sought in the above Writ Petition, paragraph 9 of the said Consent Terms is material and is reproduced herein under :-

“9 The Petitioner has filed against the Respondent and his family members, a private complaint with the learned Counsel appearing for the. 17th Metropolitan Magistrate's Court at Borivali u/s 498A, 406, 323, 504, 506(II), 34 of the IPC vide CC No.413/PW/2016. The Petitioner hereby withdraws all the allegations and statements made in the said private complaint and related applications/pleadings against the accused therein. The Petitioner undertakes that immediately upon filing of the present consent terms and in any case before passing of decree of divorce herein, she shall unconditionally withdraw/get quashed the said private complaint, by filing, at her costs, necessary applications/proceedings in the Borivali Court/Hon'ble High Court, as may be required, and shall produce certified copy of the order of withdrawal/quashing of proceedings before this Hon'ble Court and only thereafter this Hon'ble Court shall pass decree of divorce. The Petitioner shall give a prior notice of one week to the Respondent with regard to filing of the quashing Petition in the Hon'ble High Court and the Respondent shall remain present at the time of hearing of that Petition.”

It is required to be noted that by the said Consent Terms the parties had also agreed to file proceedings for divorce by mutual consent under Section 13 B of the Hindu Marriage Act. The said fact is noted in clause (1) of the said Consent Terms.

4 The first informant i.e. the Respondent No.2 is personally present in Court. She is identified by the learned counsel Shri Navin Sachanandani appearing for her. She is also identified by her Aadhar Card bearing No.7568 8784 8870. When put in the box and queried she accepts the fact that the Consent Terms were arrived at before the Marriage Counsellor. She further accepts that the affidavit tendered by the learned counsel Shri Navin Sachanandani is hers and that she has understood the contents of the said affidavit and that she has affirmed the said affidavit of her own free will and volition. In the context of the present Writ Petition paragraphs 5 and 6 are material and are reproduced herein under :-

“5 I say that I have filed the Petition bearing No.A-1665 of 2016 for divorce and other reliefs under Section 13(1)(ia) of the Hindu Marriage Act, against the Petitioner No.1 for seeking divorce at the Family Court at Bandra, Mumbai. I say that during the pendency of this Petition, I and the Petitioner No.1 arrived at mutually decided consent terms and same were filed on 17th June 2017. I say that the said consent terms are annexed to the present Petition for quashing filed by the Petitioners in this Hon'ble Court at Exhibit `B'. I say that as per the said consent terms, we have decided to part amicably by taking divorce by mutual consent simultaneously putting an end to all our disputes including the aforesaid FIR registered at my instance.

6 I say that as per the clause 9 of the said consent terms, I have withdrawn all the allegation and statement made in the said complaint and related application, pleading against the accused therein who

are the Petitioners in the present Petition for quashing. I say that I have also agreed and undertaken to unconditionally withdraw/get quashed the said complaint pending against the Petitioners before passing of the decree of divorce by the Family Court at Bandra, Mumbai”

5 The Petitioner No.1 Rohit Nitin Minawala is also personally present in Court. He is identified by the learned counsel Shri Prakash Mahadik appearing for him. He is also identified by his Aadhar Card bearing No.8281 6273 1816. When put in the box and queried, he accepts the fact that the Consent Terms were arrived at before the Marriage Counsellor and he further accepts the fact that the parties have amicably settled their disputes.

6 In the light of the Consent Terms coupled with the affidavit of the first informant i.e. the Respondent No.2 and having regard to the law laid down by the Apex Court in the matter of Narinder Singh vs. State of Punjab, reported in (2014) AIR SCW 2065 as also the judgment of the Apex Court in the matter of Gian Singh vs. State of Punjab and anr. reported in (2012) 10 SCC 303, there is no impediment in quashing the proceedings in view of the amicable settlement arrived at between the parties.

7 In the light of the above the above Criminal Application is required to be allowed and is accordingly made absolute in terms of prayer clause (a). The above Criminal Application is accordingly disposed.

8 The Petitioners to pay costs of Rs.20,000/- to be deposited with the National Association of Blind, Worli, Mumbai. The Respondent No.2 also to pay costs of Rs.10000/- to be deposited with the National Association of Blind, Worli, Mumbai within eight weeks from date and obtain a receipt and file in the Registry of this Court.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]