

Anand

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

CRIMINAL APPLICATION NO. 804 OF 2017

Jagdish Dharma Thombre & ors.

.Applicants

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. K. S. Patil, Advocate, for the Applicants

Mr. N. B. Patil, APP, for the Respondent No.1 – State

Ms Megha Bajoria, Advocate, for the Respondent No.2

CORAM : A.S.GADKARI, J.

DATE : 28.11.2017

P.C.

. This is an Application under Section 482 of the Cr.P.C. for quashing and setting aside the Judgment and Order dated 28.10.2015 in R.C.C.No. 2 of 2014 passed by the learned Judicial Magistrate First Class, Khalapur, District – Raigad.

2. The record indicates that the Applicant No.1 herein was the husband of Respondent No.2 and the other Applicants are relatives of Respondent No.2. That on the basis of first information report lodged by the Respondent No.2, a crime under Sections 498A, 406, 323, 504, 506 r/w 34 of the Indian Penal Code was registered with Khalapur Police Station, Taluka – Khalapur, District – Raigad. The investigation of the

said crime was culminated into R.C.C.No. 2 of 2014. By its Judgment and Order dated 28.10.2015 the learned Judicial Magistrate First Class was pleased to convict the Applicant No.1 Jagdish for the offence punishable under Section 498A r/w 34 and under Section 406 of the Indian Penal Code. The other Applicants are convicted for the offence punishable under Section 498A r/w 34 of the Indian Penal Code. That feeling aggrieved by the Judgment and Order dated 28.10.2015, the Applicants have preferred Cri. Appeal No. 167 of 2015 in the Court of learned Sessions Judge at Alibaug and the same is pending for final adjudication. The record further indicates that during the intervening period, the Applicant No.1 and Respondent No.2 filed a Marriage Petition bearing No. 1456 of 2016 in the Court of Civil Judge Senior Division, Kalyan, District – Thane under Section 13(b) for the Hindu Marriage Act for divorce by mutual consent. The said Petition is allowed by an Order dated 26.10.2017. As per the terms and conditions of settlement mentioned in the Judgment and Order dated 26.10.2017 passed in M. P. No. 1456 of 2016 by the Civil Judge Senior Division, Kalyan, the parties therein have decided to withdraw the complaints filed by both of them against each other and accordingly, the present Application is moved for quashing and setting aside the Judgment and Order dated 28.10.2015 in R.C.C.No. 2 of 2014 on the ground of

settlement.

3. That the Respondent No. 2 has filed an Affidavit dated 05.10.2017 in this Court in that behalf. The Respondent No. 2 is personally present in the Court and upon a query by this Court, she has admitted that she has filed the said Affidavit dated 05.10.2017 and that she has no objection for quashing and setting aside of the impugned Judgment and Order by consent.

4. In view of the above and in the interest of justice, the impugned Judgment and Order dated 28.10.2015 is hereby quashed & set aside and as a consequence thereof, the Cri. Appeal No. 167 of 2015 pending on the file of learned Sessions Judge at Alibaug is also disposed off. The fine amount, if any, deposited by the Applicants shall stand forfeited in the Government Exchequer.

5. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)