

pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1078 OF 2016

1. Mrs. Priti Chetan Kothari
 2. Mr. Rajesh Jayantilal Pandya
- .. Applicants
(Org. Accd. Nos.1 & 2)

Vs.

1. State of Maharashtra
 2. Mr. Chetan Rajnikanth Kothari
- .. Respondents

Mr. Prashant Badole for applicants.

Mr. A. R. Kapadnis, APP for State.

Mr. B. K. Mishra for respondent no. 2 – Org. Complainant.

CORAM: NARESH H. PATIL &
NITIN W. SAMBRE, JJ.

DECEMBER 11, 2017.

P.C.

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The respondent no.2 – original complainant filed a complaint with Kandivali Police Station, Mumbai for offences punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code being C.R. No. 442 of 2015 against the applicants.

3. In short, the grievance of the respondent no.2-complainant is that applicant no.1 – Priti Chetan Kothari, who is the wife of respondent no. 2 – original complainant, and applicant no.2 were responsible for misusing an amount of Rs.10 lakhs invested in Fixed Deposit Scheme with Shamrao Vitthal Co-Op. Bank Ltd., Kandivali (West) Branch, Mumbai. It was alleged that without seeking consent from the complainant, the applicant no.1 obtained a loan of Rs.8 lakhs from the same bank based on the said Fixed Deposit receipt.

4. The learned counsel appearing for the respondent no.2 submits that parties have reached settlement and accordingly consent terms are presented to this court signed by both, the complainant and applicants-accused, which are taken on record and marked “X” for identification. The learned counsel appearing for the respective parties submitted that all the parties are present before the court. They identified the parties. Clauses 5 and 7 of the Consent Term dated 11/12/2017, read as under :-

“5. The applicants & respondent no.2 agree that Rs.11,00,000/- (Eleven Lakh) is lying with the Samrao Vitthal Co-op. Bank Ltd. Kandivali west branch having its address at branch no.6, ground floor, Manek Nagar, M. G. Road,

Kandivali west Mumbai no.67, out of which Rs.7,00,000/- (Rupees seven lac) shall go in the account of Chetan Kothari (respondent no.2) & balance amount in the account of Smt. Priti Chetan Kothari (applicant no.1) etc.

7. In view of the above settlement between applicants and respondent no.2, the respondent no.2 does not want to proceed with the proceeding in C.R. No. 442/2015 dt. 10/12/2015 registered with Kandivali west police station U/S 420, 406, 34 I.P.C. and same may be quashed & set-aside in the interest of justice & here by request to this Hon'ble High court to direct the Samrao vitthal co-op. Bank Kandivali (west) branch Mumbai to release the deposited amount agreed between the parties as per clause 5 of this consent term.

5. The learned counsel appearing for the respondent no.2 tenders affidavit of respondent no.2, which is taken on record. Paras 1 and 2 of the said affidavit read as under :

“1. I state that I along with applicants settled the matters and filed the Consent Terms dated 11/12/2017 and in view of the Consent Term I do not want to proceed vide C.R. No. 442/15 dated 10/12/2015 register with Kandivali Police Station U/s 420, 406, 34 IPC and I have no objection if the said C.R. No. 442/15 is quashed and set aside.

2. I say that the contents made in Consent Terms dated 11/12/2017 is agreeable to me and applicants.”

6. The learned counsel appearing for the respective parties submit that to continue to have good relations to avoid court litigation in future and in the larger interest, the parties may be permitted to get the FIR / C.R. quashed.

7. Perused the record and the consent terms. The learned counsel submit that though the complainant and applicant no.1 are husband and wife, they are residing separately since the year 2005 and they intend to take divorce by mutual consent. Both the learned counsel submit that the husband and wife do not intend to start leaving together. The learned counsel further state that they would make efforts at their level or may advise applicant no.1 and respondent no.2 to resort to process of mediation.

8. Taking into consideration the facts and circumstances of the case, we find that it is in the interest of parties that the FIR /C. R. is quashed and set aside.

9. The F.I.R. i.e. C. R. No. 442/15 registered by the Kandivali

Police Station under Sections 420, 406 read with Section 34 of the Indian Penal Code is hereby quashed and set aside.

10. Rule is made absolute in the above terms.
11. List the matter on Thursday 21/12/2017 at 3.00 p.m.

(NITIN W. SAMBRE J.)

(NARESH H. PATIL,J.)