

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1172 OF 2016**

Kunal Vinod Bhagtani & Ors. ..Applicants

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. A.Z.Mookhtiar a/w. F.M.Chawala for the Applicant
Mrs. S.V.Sonawane, APP for the Respondent No.1.
Ms. Razia Shaikh for the Respondent No.2.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 11TH JANUARY, 2017**

ORAL JUDGMENT (PER A.S.OKA, J.)

1. Not on Board. On production, taken on board.
2. Heard the learned Counsel appearing for the applicants. Rule.
The learned APP waives service for the first respondent. The learned Counsel appearing for the second respondent waives service.
Forthwith taken up for final disposal.
3. The first applicant and the second respondent are husband and wife. The prayer in this application under Section 482 of the

Criminal Procedure Code, 1973 is for quashing the First Information Report alleging commission of offences under Section 498A, 406 read with 34 of the Indian Penal Code. The second respondent is the first informant complainant. Our attention is invited to the settlement arrived at between the first applicant and the second respondent before the Marriage Counselor of the Family Court at Bandra, Mumbai, in Petition No.A-1873 of 2014. A typed copy of the consent terms duly signed by the first applicant and the second respondent has been annexed to the application, which provides for settlement of subsisting disputes between the husband and the wife. They have agreed to take divorce by mutual consent. In terms of the settlement, a sum of Rs.7 lakhs is already deposited by the first applicant with the Family Court on 29th February, 2016.

4. The learned Counsel appearing for the applicants and the second respondent state that the parties are present in the court. It is pointed out that the Family Court has kept the petition on 20th February, 2017 for passing a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The first applicant and the second respondent, who are personally present in

the court, through their respective counsel undertake to the Court, not to withdraw their respective consent recorded for passing the decree under Section 13B of the Hindu Marriage Act.

5. The consent terms filed before the Family Court show that all subsisting disputes between the husband and wife are settled. There is an affidavit filed by the second respondent who is personally present in the Court. She has recorded her consent for quashing the proceedings. In view of the settlement of the matrimonial dispute, the continuation of the proceeding will cause undue hardship to the both the applicant and the second Respondent. Therefore, this is a fit case to exercise powers of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure Code, 1973. Accordingly, we pass the following order:

i) Rule is made absolute in terms of prayer clause (a) which reads thus:

“That this Hon'ble Court be pleased to quash and set aside the FIR/CR No.313/2011 registered with the Mahim Police Station, Mumbai under Sections 498(A), 406, 34 of Indian Penal Code, 1860 along with all proceedings in

CC/464/PW/2012 pending on the file of the Metropolitan Magistrate, 9th Court, Bandra, Mumbai arising out of the said First Information Report being FIR No.313/2011, lodged by the Respondent No.2 with the Mahim Police Station.”

- ii) All concerned to act on the authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)