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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
WRIT PETITION NO.4224 OF 2016

Rahul Dattatray Kad & Ors. ...Petitioners
vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Vikas B. Shivarkar for the Petitioners
Mr.N.B.Patil, APP for the respondent No.1
Mr.Pravin Dabade for respondent No.2

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : MARCH 1, 2017

P.C.:

1 Rule. The learned APP waives service for the first respondent. The Advocate for the second respondent waives service. Forthwith taken up for final hearing.

2 The second respondent and the first petitioner are wife and husband respectively. At the instance of the second respondent, a first information report was registered against the petitioners for the offence punishable under sections 498-A, 495, 406, 323, 504, 506, 354 read with section 34 of the Indian Penal Code. Charge sheet has been already filed on the basis of the FIR. The prayer in this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 is for quashing the charge sheet.

3 The petitioners and the second respondent are relying upon the settlement arrived at between them in a pending Marriage Petition No.233 of 2015 filed by the second respondent against the first petitioner in the Court of Civil Judge (Senior Division) at Kalyan for seeking divorce. As per the settlement, the first petitioner agreed to pay a sum of Rs.10,50,000/- to the second respondent. The parties agreed to convert the divorce petition into a petition under section 13-B of the Hindu Marriage Act,1955. A copy of the application made by the first petitioner and the second respondent on 8th November 2016 in the pending matrimonial petition has been placed on record on the last date.

4 Today, additional affidavit of the second respondent has been filed who is personally present in the Court. In paragraph 6 of the affidavit she has stated that on the said application dated 8th November 2016 at Exhibit-16, the learned Civil Judge has permitted conversion of the petition into a petition under section 13-B of the Hindu Marriage Act. It is pointed out that a demand draft dated 4th January 2017 in the sum of Rs.10,50,000/- drawn on the second respondent has been deposited in the Court of Civil Judge (Senior Division), Kalyan. There is a specific statement to that effect in paragraph 8 of the affidavit. The learned counsel for the petitioners on instructions of the first petitioner who is personally present in the Court states that the petitioners have no objection if the Court of Civil Judge (Senior Division) permits the

second respondent to take the demand draft and to encash the same after the criminal proceedings subject matter of this petition are quashed. We accept the said statement.

4 The first petitioner and the second respondent who are personally present in the Court state that they will not withdraw their respective consent for passing a Decree under section 13-B of the Hindu Marriage Act, 1955. The said statements are accepted as their undertakings.

5 In view of settlement of the matrimonial dispute between the first petitioner and the second respondent, the continuation of criminal proceedings will cause undue harassment to both the parties. Therefore, this is fit case to exercise power under section 482 of the Code of Criminal Procedure, 1973.

6 Accordingly, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) After going through the records and proceedings in respect of R.C.C. No.551 of 2014 pending before the Ld J.M.F.C-3, Kalyan, Thane this Hon'ble Court be pleased to quash and set aside the FIR vide C.R.No.70 of 2014 registered at Dombiwali Police Station, Thane and the Chargesheet vide C.R.No.I-77 of 2014 filed by the

Dombiwali Police Station, Thane so also the further proceedings i.e the R.C.C.No.551 of 2014 pending before the Ld.J.M.F.C.-3, Kalyan, Thane.

(II) On production of an authenticated copy of this Judgment and order, the learned Civil Judge (Senior Division), Kalyan will direct the office of his Court to hand over the demand draft dated 4th January 2017 in the sum of Rs.10,50,000/- lying deposited in the said Court to the second respondent. It will be open for the second respondent to encash the said demand draft. We accept the undertakings of the first petitioner and the second respondent that they will not withdraw their consent by passing a Decree under section 13-B of the Hindu Marriage Act

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)