

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1470 of 2016

Shri Ganesh Nanaji Pagar and Others. .. Applicants
Vs
The State of Maharashtra and Another. .. Respondents

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Ms. Noorseema Baig i/b Shri Sarfaraz Khalife for the Applicants.
Mrs.S.V. Sonawane, APP for the Respondent No.1.
Shri Shantanu R. Phanse for the Respondent No.2.
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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ
DATED : 2ND MARCH 2017

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

1. Heard the learned counsel appearing for the Applicants, the learned APP for the first Respondent and the learned counsel appearing for the second Respondent.

2. Rule. The learned APP waives service for the first Respondent. The Advocate for the second Respondent waives service. Forthwith taken up for final disposal.

3. The prayer in this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is for quashing the First Information Report (FIR) lodged at the instance of the second Respondent for the offences punishable under Sections 498A, 406 313,

323, 504 and 506 read with 34 of the Indian Penal Code. The first Applicant and the second Respondent are the husband and wife.

4. The prayer for quashing is pressed into service on the basis of a settlement between the parties which is reflected from the Settlement Agreement dated 5th January 2017, a copy of which is annexed to the affidavit of the second Respondent. We have perused the said Settlement Agreement. The said Settlement Agreement records that a Mediator was appointed by the Court at Manmad. The settlement provides that the first Applicant who is a resident of United States of America will take the second Respondent and their daughter in the United States of America. The settlement records that the first Applicant and the second Respondent will happily reside with each other. In terms of the settlement, the Criminal Miscellaneous Application No.36 of 2010 was disposed of by the learned Judicial Magistrate, First Class, Manmad. In the said order, the learned Judicial Magistrate, First Class has referred to the settlement arrived at before the learned Mediator and the report of the learned Mediator. The said Application was filed by the second Respondent under Section 125 of the CrPC.

5. Today, an affidavit is tendered by the second Respondent to which Air Ticket provided by the first Applicant to the second

Respondent and their daughter Vaibhavi is annexed. In the affidavit, it is recorded that the second Respondent will be flying to United States of America (USA) on 17th March 2017. The photocopies of the passport of the second Respondent and the daughter are annexed showing that H4 Visa has been granted to both of them by the authorities of USA. The learned counsel appearing for the Applicants states that the Visa granted to both of them will expire on 15th September 2017.

6. The learned counsel appearing for the Applicants states that in the event the second Respondent applies for extension of Visa granted to her, the first Applicant will make all possible efforts for grant of extension of Visa to the second Respondent as well as the minor daughter Vaibhavi. We accept the said statement.

7. The Settlement Agreement dated 5th January 2017 contains a clause that the first Applicant has agreed to take the second Respondent and daughter Vaibhavi to United States of America within a period of two months. Now, there is a substantial compliance with the said assurance by the first Applicant as evidenced by the affidavit tendered today by the second Respondent.

8. Thus, the settlement arrived at between the first Applicant and the second Respondent in the form of Settlement Agreement dated 5th January 2017 has been acted upon.

9. The matrimonial dispute between the first Applicant and the second Respondent was the root cause for registration of the offence subject matter of this Application. Now, there is a complete settlement of the matrimonial dispute to the satisfaction of the second Respondent. Therefore, continuation of the criminal proceedings will cause undue harassment to the first Applicant and the second Respondent. Therefore, this is a fit case to exercise a power under Section 482 of the CrPC.

10. Accordingly, we pass the following order.

ORDER :

(a) Rule is made absolute in terms of prayer clause (a), which read thus:

“(a) To issue an appropriate order or direction, for quashing the Charge sheet, dated 21.06.2016 filed in RCC No.68 of 2016, pending on the file of the 1st JMFC Court, Manmad City, Nashik against the Applicant Nos.1 to 7 and to acquit them;

(b) All concerned to act upon an authenticated copy of this order.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)