

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

WRIT PETITION NO. 4393 OF 2016

Dharmendar Atmaram Shivani ..Petitioner

v/s.

Renu Dharmendar Shivani & Anr. ..Respondents

Mr. Manish Rai for the Petitioner.

Mr. F.R.Shaikh APP for the Respondent No.2.

Mr. Faisal Vora for the Respondent No.1.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.

DATED : 4TH 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 Petitioner, the learned Counsel for the first Respondent and the learned APP for the second Respondent.
3. Rule. Respondents waive service. With consent of parties, writ petition is forthwith taken up for hearing.
4. The prayer in this writ petition under Article 226 of the

Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short “the said Code”), is for quashing the criminal proceeding for the offences punishable under Section 498A, 406, 323 and 504 of the Indian Penal Code. The first information report was registered on 17th August, 2007 at the instance of the first respondent wife. The petitioner was the husband of the first respondent wife. Chargesheet was filed on 14th November, 2007.

5. The petitioner and the first respondent filed joint petition seeking a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955. On 26th August, 2015, the learned Judge of the Family Court at Mumbai passed a decree dissolving the marriage between the petitioner and the respondent by mutual consent. A true copy of the judgment in the said petition records that the parties have settled all subsisting disputes. The first respondent has filed an affidavit recording her consent for quashing the criminal proceedings. She has stated that the settlement was brought about between her and the petitioner by mediation by the family members and that is how the parties agreed to obtain a decree of divorce by mutual consent. In view of the settlement of all the disputes that the

decree of divorce has been passed.

6. Hence, the continuation of criminal proceeding will cause undue hardship to both the petitioner and the first respondent . This is a fit case where the law laid down by the Apex Court in Gian Singh vs State of Punjab ¹ will clearly apply. Accordingly, petition must succeed and we pass the following order:-

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

“ The CC No.1089 of 2007 pending before the Ld.JMFC, Ulhasnagar arising out of CR No.192 of 2007 registered with Central Police Station, Ulhasnagar, be quashed and set aside”.

ii) There shall be no order as to costs.

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

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)

¹ (2012)10 SCC 303