

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL WRIT PETITION NO. 1481 OF 2016

- 1] Javed Khan s/o Abdul Hameed Khan,
age 40 years, occ. Service,
R/o B-Flat 206 2nd Floor,
Tain Square, Fatema Nagar,
Wanowarie, Pune – 2,
 - 2] Shahenaz @ Kareema w/o Abdul Hameed Khan,
age 61 years, occ. Household,
R/o as above,
 - 3] Nazneen d/o Abdul Hameed Khan,
age 44 years, occ. Service,
R/o 3rd Floor, Satgulab Complex,
Next to Tara Pan Centre,
Osmanpura, Aurangabad,
 - 4] Mahjabeen @ Jabin w/o Kazi Ashfaq,
age 42 years, occ. Service,
R/o as above,
 - 5] Tahseen w/o Hidayat Ali,
age 34 years, occ. Service,
R/o House No. 8-13-273, Galli No.1,
Beside Firdos Jewellers,
Sami Colony, Roshan Gate,
Aurangabad,
 - 6] Shaheen w/o Sheikh Malik,
age 45 years, occ. Service,
 - 7] Sheikh Malik s/o Sheikh Usman,
age 47 years, occ. Service,
Both 06 & 07, R/o Flat 306,
3rd floor, Ikon Avenue,
Central Street, Pune
- ...Petitioners
[Orig. Accused no. 1 to 5]

VERSUS

- 1] The State of Maharashtra,
- 2] Firdos div/o Javed Khan
@ Firdos d/o Shaikh Aziz
Ahemad,
age 23 years, occ. Household,
R/o Flat No.9, 2nd Floor,
Amodi Complex,
Beside B.M.C Bank,
City Chowk, Aurangabad ...Respondents
[No.2 Orig. complainant]

.....

Mr. A.S.Barlota, advocate for the petitioners
Mr A.P.Basarkar, A.P.P. for respondent no.1
Mr. R.C.Bora, advocate with Mr. Shaikh Shafique,
advocates for respondent no. 2

.....

CORAM : K.L.WADANE, J.

DATED : 20th February, 2018

ORAL JUDGMENT :

Rule. Rule made returnable forthwith.
With the consent of the learned counsel for parties, the petition is taken up for final hearing at the admission stage. Heard learned counsel for the respective parties.

2] The petitioners have challenged the order below Exh.12 in Regular Criminal Case No. 977 of 2013, dated 3.9.2016, by which application filed

by the petitioners for their discharge is rejected.

3] I have heard the learned counsel for the petitioners as well as the learned A.P.P. and the learned counsel for the respondents.

4] Petitioner no.1 married with respondent no.1 on 8.7.2012. After solemnization of the marriage, respondent no.2 cohabited with petitioner no.1 at Pune for some time. On 1.11.2012 petitioner no.1 has given Talaq to respondent no.2.

5] On 21.11.2012 respondent no.2 filed complaint before the Judicial Magistrate, First Class, Aurangabad, seeking directions under Section 156 (3) of the Criminal Procedure Code. The prayer of respondent no.2 was allowed and directions under Section 156 (3) of the Criminal Procedure Code were given. Pursuant to the investigation, the concerned police have filed

charge sheet against the petitioners and other accused bearing R.C.C. No. 977 of 2013.

6] On the same set of facts, respondent no.2 filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 bearing Criminal Miscellaneous Application No. 2076 of 2012 and another petition for maintenance under the provisions of Section 125 of the Criminal Procedure Code bearing Petition No. E-15 of 2013 before the Family Court at Aurangabad.

7] On 18.11.2013, petitioner no.1 and respondent no.2 got settled their disputes amicably before the Mediator by recording terms of settlement in writing and on the settlement there are signatures of petitioner no.1, 3 and respondent no.2 along their respective advocates.

8] In view of the said settlement, it was agreed by respondent no.2 that she will help the petitioners to dispose of the proceedings bearing

Regular Criminal Case No. 977 of 2013. In spite of directions given by this Court in Criminal Application No. 4430 of 2013, respondent no.2 remained absent. Thereafter, as per the liberty granted by this Court, the petitioners have moved application below Exh.12 for their discharge.

9] Learned counsel for the petitioners submits that pursuant to the settlement, other proceedings were compromised, however, now respondent no.2 is not ready to compound the offence punishable under Section 498-A of the Indian Penal Code.

10] Learned counsel appearing for respondent no.2 submits that petitioner no.1 agreed to return certain articles belonging to respondent no.2, however, he failed to return the same.

11] Learned counsel for the petitioners submits that those articles were kept with a third person namely Jamil Bhai and after the compromise

of Regular Criminal Case No. 977 of 2013, respondent no.2 is entitled to take those articles lying with third person.

12] Learned counsel for the petitioners drawn my attention to the compromise took place between the parties. A copy of the same is placed on record in this proceeding. On perusal of the same, it appears that the compromise was recorded in Miscellaneous Application No. 2076 of 2012 between petitioner nos. 1 and 3 and respondent no.2 signed by their advocates also. This compromise is verified by the learned Additional Sessions Judge, Aurangabad. On perusal of the contents/conditions of the compromise, it was agreed by and between the parties that the cases pending against the petitioners have to be withdrawn. It is also mentioned in the compromise that respondent no.2 has accepted permanent alimony of Rs. 2,75,000/- through Demand Draft, dated 18.11.2013. It was further agreed that after the compromise of the case under Section

498-A of the Indian Penal Code, respondent no.2 is at liberty to take the articles kept with one Jamil Bhai.

13] So, sum and substance of the compromise is that all the cases pending between the parties have to be withdrawn and further it is clear that petitioner no.1 has paid amount of maintenance in lump-sum and respondent no.2 has accepted the same by Demand Draft. Nowhere it is the case of respondent no.2 that petitioner no.1 obtained her signature by inducement or fraud. On the contrary, from the order passed by learned Additional Sessions Judge, Aurangabad, it appears that both the parties to the settlement i.e. petitioner no.1 and respondent no.2 have accepted the contents of the settlement to be true.

14] In such circumstances and as per the observations of the Apex Court in the case of **Mohd. Shamim vs Nahid Begum in Criminal Appeal No. 23 of 2005** and in view of the settlement arrived

at between petitioner no.1 and respondent no.2, continuation of such proceedings would be an abuse of process of the Court.

15] The Trial Court has not taken in to consideration the fact that petitioner no.1 and respondent no.2 have settled their disputes once for all, that too, after acceptance of lump-sum amount of maintenance by respondent no.2. Now, respondent no.2 cannot turn around and say contrary to the settlement arrived at between the parties.

16] In view of above, the Criminal Writ Petition is allowed. The order passed below Exh.12 in Regular Criminal Case No. 977 of 2013 is hereby quashed and set aside and application Exh.12 is allowed and petitioners stand discharged from Regular Criminal Case No. 977 of 2013. No costs. Rule is made absolute accordingly.

(K.L.WADANE, J.)

dbm