

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 656 OF 2015**

Ankush Manohar Bhandari & ors                      .. Petitioners  
Versus  
Mrs.Anita Ankush Bhandari and anr                      .. Respondents

...

Mr.R.J. Baddam with Amit V. Chougule for the petitioners.  
Mr.F.R. Shaikh, APP for the State.

**CORAM: SHRI RANJIT MORE &**  
**SMT. BHARATI H.DANGRE, JJ.**

**DATED : 23<sup>rd</sup> AUGUST 2018**

**P.C:-**

1                      Despite service to the respondent no1, none appears on her behalf. We have therefore, heard learned counsel for the petitioner and learned APP for the State.

2                      The petition is filed for quashing the proceedings of the Criminal Case bearing No.146/PW/14 pending on the file of 73<sup>rd</sup> Court at Vikhroli, Mumbai. The said case arises out of the registration of an FIR bearing C.R.No.7 of 2013 registered

with Pant Nagar Police Station at Mumbai for an offence punishable under Section 498(A), 406 r/w 34 of the IPC. The petitioner no.1 and respondent no.1 got married on 1<sup>st</sup> December 2011. Rest of the petitioners are the relatives of the petitioner no.1. A marital dispute between the parties gave rise to filing of several proceedings, civil and criminal in nature. The subject matter of the present petition is one of them.

4           The petitioner no.1 and respondent no.1 filed Petition No.F-2165 of 2013 for decree of divorce by mutual consent in Family Court at Bandra. In the said proceedings, the parties filed consent terms at Exhibit-16 which reads as follows :

- (a) Both the Petitioner hereby agree that the Petitioner No.1 has undertaken to pay an amount of Rs.2,10,000/- (Rupees Two lakhs and Ten thousand only) vide pay order No.047379 dated 27-10-2013 drawn on Punjab Maharashtra Co-operative Bank, Ramabai Nagar, Ghatkopar (East) branch to the petitioner no.2 towards permanent maintenance for her past, present and future maintenance before marriage counsellor at Family Court at Bandra and that the petitioner no.2 has undertaken that she shall not claim any amount in any manner whatsoever towards her maintenance in future.

- (b) Both the Petitioner further agree not to claim any right, title or interest in the properties of each other for the past, present or future.
- (c) Both the Petitioner hereby agree not to initiate any legal proceedings in respect of cause of action and/or dispute pertaining to any facts transpired during the subsistence of the marriage between the parties.
- (d) Both the petitioner agree and undertake that they will not make any derogatory or defamatory allegations against each other.
- (e) Both the Petitioner agree with each other that neither of them shall raise any disputes as regards the matrimonial disputes, which were there prior to their separation or thereafter till the date of filing of present petition nor either them take up any litigation against each other on any issue except the present petition for decree of divorce by mutual consent.
- (f) Both the Petitioner agree that in view of the above they shall have no claims, rights of whatsoever nature against each other in future.
- (g) Both the Petitioner undertake to each other that nothing is due and payable by either of the Petitioner to each other.
- (h) Both the Petitioner have already exchanged all of their belongings i.e. Gold jewellery, clothes and utensils and other things.
- (i) The Petitioner No.2 has undertaken to cooperate and/or to consent for quashing of Criminal Complaint and/or FIR

No.7 of 2013 filed against Petitioner No.1 at the instance of Petitioner No.2 whereas the legal as well as miscellaneous expenses with respect to the present petition are paid by the Petitioner No.1.

- (j) Both the petitioner agree to co-operate with each other in carrying out the aforesaid consent terms.

5           In view of the consent terms, the Marriage Petition was decreed on 27<sup>th</sup> May 2014, thereby dissolving the marriage between petitioner and respondent no.1. A statement is made by the learned counsel for the petitioner that subsequent thereto, the petitioner as well as respondent no.1 are re-married. Statement is accepted.

6           In clause (i) of the consent terms referred above, the respondent no.1 has undertaken to co-operate and consent for quashing of the subject proceedings of the criminal case.

7           The respondent no.1 – original complainant and the petitioners filed joint application for compounding the matter

before the Metropolitan Magistrate at Vikhroli. Copy of this application is annexed at page 82 of the additional compilation. The respondent no.1 has filed an affidavit in the Criminal case giving No objection for compounding the matter. The learned Magistrate, however, rejected the application on the ground that offence punishable under Section 498A is not compoundable and therefore, the petitioner has approached this Court in invoking the powers under Section 482 of the Code of Criminal Procedure.

8           We have perused the judgment of the Family Court at Bandra delivered in Petition No.F-2165 of 2013 on 27<sup>th</sup> May 2014 on a petition filed under Section 13B of the Hindu Marriage Act, requesting for divorce by mutual consent. Before that Court, both the petitioners had filed their respective affidavits. The Court had noted that the petitioner no.1 husband had paid an amount of Rs.2,10,000/- to the petitioner no.2 towards permanent alimony and the parties have agreed that there will have no claim of property or maintenance against each other. Based on the said arrangement arrived at

between the parties and since the parties had mutually agreed to dissolve mutually by free will and consent, petition was allowed and the marriage solemnized between the parties was dissolved by decree of divorce by mutual consent with effect from the date of the order. The petitioner has also placed on record the said decree. Though the decree contained a categorical clause that the petitioner no.2 i.e. wife to co-operate/or to consent for quashing the criminal complaint and/or FIR No.7 of 2013 filed against the petitioner no.1, and the parties had agreed to co-operate with each other in carrying out the aforesaid consent terms, the respondent no.1 is not co-operating to quash the proceedings before this Court.

It is informed that the respondent no.1 is now married and this may be a reason for her non co-operation. However, from the record, it is amply clear that respondent no.1 gave an undertaking before the Family Court as well as Metropolitan Magistrate's Court that she will co-operate with the petitioner for quashing the proceedings of the subject matter.

9                    In these circumstances and especially in view of the law laid down by the Apex Court in the case of **B.S.Joshi versus State of Haryana AIR 2003 SC 1386,** we are of the view that quashing of the subject criminal case would be in the interest of justice. Besides that, we are also of the opinion that no purpose will be served by keeping the criminal case pending except burdening the Criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the subject FIR is required to be quashed. The application is, accordingly, made absolute in terms of prayer clause (a) and is disposed of as such.

**(SMT. BHARATI H. DANGRE, J.)**

**(RANJIT MORE, J.)**

Manali  
Prasanna  
Tilak

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by Manali  
Prasanna Tilak  
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2018.08.29  
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