

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 852 OF 2018**

Navin Gonsalves & Ors

..Petitioners

Vs.

The State of Maharashtra & Anr

..Respondents

Ms Shreya Shrivastava for the Petitioners

Mrs. Anita Singh for the Respondent No.2

Mr. Ajay Patil APP for the Respondent State

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL,JJ**

DATE : 26th APRIL, 2018

PC.

1 The above Petition has been filed for quashing and setting aside of the proceedings being C. C. No.481/PW/2015 pending on the file of the Learned 22nd Additional Metropolitan Magistrate. The said case is arising out of the FIR being C.R. No. 565 of 2014 dated 13-11-2014 registered with the MIDC Police Station for the offences punishable under Sections 498A read with 34 of the Indian Penal Code, 1860. The said FIR in turn has arisen on account of the matrimonial dispute between the Petitioner No.1 and the Respondent No.2 who are husband and wife. It seems that the parties are before the Family Court in view of the Petition for divorce filed by the Respondent No.2 on the ground of cruelty. In the said Petition the parties have arrived at Consent Terms and have decided to seek divorce by mutual consent

by converting the said Petition to a Petition for divorce by mutual consent. In the Consent Terms in paragraph 7 thereof the Respondent No.2 who is the Petitioner in the Family Court has agreed that she would not cause any impediment and difficulty in getting the complaint under Section 498A quashed. The Consent Terms also refer to various payments which are to be made by the Petitioner No.1 herein. However, it is not necessary to refer to the said terms in the context of the relief sought in the above Petition.

2 The first informant i.e. the Respondent No.2 has filed an affidavit in the above Petition which is dated 17-4-2018 which is affirmed in this Court. The undertone of the said affidavit as can be seen from its reading is that the Respondent No.2 is to get certain amount on the quashing of the FIR in question. In the context of the relief sought in the above Petition paragraphs 7 and 8 of the said affidavit are material and is reproduced hereinunder.

7. I say that it has been further mutually agreed to that the balance amount payable of Rs.2.50 lakhs (Rupees Two Lakhs and Fifty Thousand) shall be handed over to me by the Petitioner No.1 at the time when the First Information Report is finally quashed by this Hon'ble Court against all the Petitioners. The balance amount will be paid by way of D.D.

8. I say that subsequent to final order of quashing of FIR, I and Petitioner No.1 will appear before the Hon'ble Family Court No.6 and get the marriage dissolved under the provisions of Mutual Consent Divorce as envisaged u/s 10-A of The Divorce Act 1869.

2 The Respondent No.2 Shibani Suvarna is personally present in Court. She is identified by the Learned Counsel Ms Anita Singh. She is also identified by her Adhar Card bearing No. 326911555584 which is in her maiden name Shibani Bhaskar Suvarna which is the name also appearing in the cause title of the above Petition. When put in the box and queried, she states that the Consent Terms have been filed between the parties in the Family Court. She further states that the affidavit filed in the above Petition dated 17-4-2018 is her's and that she has read and understood the contents of the said affidavit and that she has signed the said affidavit of her own free will and volition. Lastly she states that she does not want to proceed with the FIR in question in view of the settlement between the parties.

3 The Petitioner No.1 husband is not present in court as he is working in Doha, Qatar. However, the Petitioner No.2 who is his brother Kunal Gonsalves is personally present in Court. He is identified by the Learned Counsel Ms Shreya Shrivastava. He is also identified by his Adhar Card bearing No. 424271586383. When put in the box and queried he states that the settlement is acceptable to the Petitioner No.1. He further states that the Petitioner No.1 has authorised him to convey his acceptance of the settlement. The Respondent Nos.3 and 4 are also personally present in Court. It is not necessary to record their statements in view of the statements of the Respondent No.2 and the Petitioner No.2 which have been already recorded

and which have been adverted to hereinabove.

4 Having regard to the consent terms and the affidavit filed by the Respondent No.2, the statements made by the Respondent No.2 and the Petitioner No.2 when put in the box and queried, the same indicate that the parties have settled their dispute as a result of which the Respondent No.2 does not desire to proceed with the FIR in question. Having regard to the judgments of the Apex Court in the matter of **Gian Singh V/s State of Punjab & Anr¹** and **Narinder Singh & ors v/s. State of Punjab & Anr²**, no useful purpose would be served in keeping the proceedings in question pending. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Writ Petition is accordingly disposed of.

5 The Petitioner No.1 to deposit costs of Rs.20,000/- and the Respondent No.2 to deposit cost of Rs.10,000/- totalling to Rs.30,000/- with the State Legal Aid Fund within 6 weeks from date. Receipts to be obtained and filed in the registry.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]

¹ (2012) 10 SCC 303

² 2014 AIR SCW 2065