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

WRIT PETITION NO.1521 OF 2018

Mohammed Ismail Osmani and anr. ... Petitioners
v/s
State of Maharashtra and ors. ... Respondents

Mr Zaid Ansari for Petitioners.
Mr F.R. Shaikh, APP for State.
Mr Mangesh R. Kokare for Respondent No.2.

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

DATED : 19th SEPTEMBER 2018

P.C. :

1. The learned counsel for Petitioners, at the outset, seeks leave to amend the prayer clause so as to give particulars of the criminal case. Leave granted. Necessary amendment be carried out forthwith.

2. The Petitioners seek quashing and setting aside

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the charge-sheet filed by the Oshiwara Police Station before the Railway Mobile Metropolitan Magistrate Court at Andheri, Mumbai in connection with the FIR registered with C.R. No.148/2017 under section 498A, 323 and 506 of IPC at Oshiwara Police Station, Mumbai upon Respondent No.2's complaint against the Petitioners and Respondent No.3

3. The marriage of Respondent No.2 with Respondent No.3 has taken place as per Muslim Personal Law on 3rd February 2012 and there are two minor daughters born out of the said wedlock. The Respondent No.2 and Respondent No.3 have been residing in Dubai but the Petitioners are residing in Mumbai. The allegation levelled by the Respondent No.2 was in respect of physical and mental harassment to which she was subjected to in Dubai as well as in Mumbai and that resulted in lodging of FIR by her at Oshiwara Police Station.

4. In an Anticipatory bail application filed before this Court, the husband and wife have submitted the terms of settlement.

In terms of clause 2.5, the Petitioners and Respondent No.3 agreed to pay monthly amount of Rs.10,000/- towards maintenance of two minor daughters of Respondent No.3 and Respondent No.2, which shall be paid on actual basis and for which appropriate receipts shall be issued by the school authorities. The Respondent No.2 has agreed that she has no demand towards her maintenance as she is working and resultantly is able to and can take care of herself.

5. The Respondent No.2 has filed affidavit dated 13th June 2018. In paragraph 2 of her affidavit, she has given no objection for quashing the subject FIR.

6. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure and undue influence. She has further confirmed that she has no objection for quashing and setting aside the subject FIR initiated by her against the Petitioners.

7. The Apex Court in B.S. Joshi Vs. State of Haryana, reported in AIR 2003 SC 1386, has held that in the event of settlement of matrimonial dispute, the FIR under section 498A can be quashed, even though the said offence is not compoundable in terms of section 320 of the Cr.P.C. the relevant observations of the Apex Court are contained in paragraphs 14 and 15 which are reproduced herein below :-

“14. There is no doubt that the object of introducing Chapter XX-A containing section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from setting earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent power can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code.”

8. In light of the aforesaid observations of the Hon'ble Apex Court, there is no legal impediment in quashing the FIR

in question, by consent.

Hence we quash and set aside Criminal Case No.936/PW/2018 in connection with FIR registered as CR No.148 of 2017 under sections 498A, 323 and 506 of Indian Penal Code 1860 dated 1st May 2017 by the Oshiwara Police Station against the Petitioners and the Respondent No.3 pending before the Railway Mobile Metropolitan Magistrate's Court at Andheri.

10. Accordingly, Petition is allowed in terms of prayer clause (a).

(SMT BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)