

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 563 OF 2018**

Ajay Anil Kumar Mishra & Ors. ...Applicants
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. S. G. Pandey for the Applicants

Mr. K. V. Saste, A.P.P for the Respondent Nos.1 & 2-State

Mr. K. H. Giri a/w Ms. Geeta Tripathi for the Respondent No. 3

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
FRIDAY, 10th AUGUST 2018**

P.C. :

1 The above Criminal Application has been filed for quashing of the MECR being No. 8 of 2015 registered with the Nirmal Nagar Police Station, Mumbai on 6th September 2015 for the offences punishable under Sections 498(A), 406, 506(II), 504, 323 r/w 34 of the Indian Penal Code and under Section 3 of the Prevention of Dowry Act, arising out of which, the proceedings being CC No. 823/PW/2016 are pending before the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai.

2 The said MECR is a fall out of the marital discord between the Applicant No. 1 and the Respondent No. 3, who are husband and wife. It seems that the parties were also before the Family Court in Marriage Petition No. A-2401 of 2016 filed by the Respondent No. 3 herein for divorce. In the said Marriage Petition, the parties arrived at a settlement before the Marriage Counsellor on 11th January 2018. The said settlement has been reduced into writing by way of Consent Terms of the said date. In the context of the present Application, Clause (4) of the said Consent Terms is material and is reproduced hereinunder :

“4. It is agreed between the parties that, within 15 days of filing of present consent terms the Respondent shall apply for quashing of the criminal Case vide C.C. No. 823/PW/2016, pending to the file of Ld. Metropolitan Magistrate's 32nd Court Bandra, Mumbai, in Nirmal Nagar Police Station MECR No. 8/2015, dated 06-09-2015, against the respondent and his father and brother, U/Sec. 498-A, 406, 506 (Part-II), 323 r/w Sec. 3 of Dowry Prohibition Act, r/w 34 of I.P.C., before the Hon'ble High Court Bombay and the Petitioner undertakes to cooperate and give no objection, in respect of the said proceedings.

3 The unaffirmed affidavit of the Respondent No. 3 is tendered across the bar by the learned counsel Mr. Giri. Paragraph 3 of the said affidavit is relevant and is reproduced hereinunder :

“3. I state that I am executing this affidavit with my own will and consent without any coercion, or force from the Applicants or anybody else, in order to produce the same before the Hon'ble High Court in the above referred Application to enable this High Court to quash the FIR/M.E.C.R. No. 08 of 2015, which was registered by the Respondent No. 2, Nirmal Nagar Police Station, for the offences punishable under Sections 498(A), 406, 506(II), 504, 323 r/w S-34 of I.P.C & Section 3 of Prevention of Dowry Act, on dated 06/09/2015 against the Applicants.”

The learned counsel undertakes to get the affidavit affirmed in the course of the day. Statement accepted.

4 The Respondent No. 3 is personally present in Court. She is identified by the learned counsel Mr. Giri. She is also identified by her Aadhar Card bearing No. 481456599034, which is in her maiden name Khushboo Uttamkumar Shukla. When put in the box and queried, she states that she has read and understood the contents of the unaffirmed affidavit, which has been tendered today by her learned counsel Mr. Giri. She further states that she has filed the affidavit in view of the settlement between the parties. She lastly states that she has filed the affidavit of her own free will and volition.

5 The Applicant No.1-Ajay Mishra is personally present in Court. He is identified by the learned counsel Mr. Pandey. He is also identified by his Aadhar Card No. 739431760053. When put in the box and queried, he accepts the factum of settlement between the parties, as a result of which, the Respondent No. 3 is not desirous of proceeding with the case in question. It is not necessary to record the statements of other Applicants, as they are the father and brother of the Applicant No.1-Ajay Mishra.

6 Having regard to the Consent Terms filed in the Family Court, the affidavit of the Respondent No. 3 and the statements made by the Respondent No. 3 and the Applicant No. 1 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. 3 is not desirous of proceeding with the case in question.

7 In the factual backdrop as above, a useful reference could be made to the judgments of the Apex Court in the matter of ***Gian Singh vs. State of Punjab & Anr.***¹ and ***Narinder Singh & Ors. vs. State of Punjab &***

1 (2012) 10 SCC 303

Anr.², which lead to a conclusion that no useful purpose would be served in keeping the proceedings pending, in view of the settlement between the parties.

8 The above Application is accordingly allowed and made absolute in terms of prayer clause (a).

9 In the facts and circumstances of the case, the Applicant No.1 to deposit costs of Rs.2,000/- with the State Legal Aid Fund within six weeks from date. Receipt to be obtained and filed in the Registry.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.

² 2014 AIR SCW 2065