

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2927 OF 2013**

Yogesh Ramdas Dabhade & Ors

..Petitioners

Vs.

The State of Maharashtra & Anr

..Respondents

Mr. S. S. Punde for the Petitioners

Mr. A. D. Kamkhedkar APP for the Respondent State

None for the Respondent No.2

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 6th JUNE, 2018**

P.C.

1 The above Writ Petition has been filed for quashing of the Regular Criminal Case No.1102 of 2012 pending on the file of the Learned JMFC, Court No.4, Nashik, arising out of CR No.171 of 2012 registered with the Sarkarwada Police Station for the offence punishable under Section 498(A), 323, 504, 406, 506 read with 34 of the IPC. The said FIR has arisen out of the matrimonial dispute between the Petitioner No.1 and the Respondent No.2 herein who are husband and wife. The other Petitioners are the relatives of the Petitioner No.1 husband. It is not necessary to further dilate on facts.

2 Suffice it would be to state that the parties were before the Family Court at Nashik in Hindu Marriage Petition No.167 of 2013 which was filed by the Petitioner No.1 for divorce on the ground of desertion i.e. under Section

13(b) of Hindu Marriage Act. In the said Petition the parties were referred to the Marriage Counsellor as per the procedure. Before the Marriage Counsellor the parties arrived at a settlement in the form of terms and conditions and decided to seek divorce by mutual consent by converting the Marriage Petition filed under Section 13(b) to a Petition under Section 13(B) of the Hindu Marriage Act. In so far as the present Petition is concerned, clause (6) of the terms and conditions which were arrived at between the parties before the Marriage Counsellor, is relevant and is reproduced hereinunder:

(6) The respondent has agreed and undertakes to withdraw the complaint filed u/s 498-A of IPC and also the case filed under Domestic Violence Act. Both the cases are pending in Nashik Court. The respondent also agreed and undertakes to withdraw both the cases unconditionally before the day of decree of divorce. The respondent wife also agreed and undertakes not to claim the maintenance granted in the case filed under Domestic Violence Act and also not to execute the said order.

3 Hence in terms of clause (6) the first informant i.e. the Respondent No.2 herein had agreed to withdraw the complaint filed under Section 498A and also the case filed under the Domestic Violence Act. The case filed under Section 498A is the case arising out of the instant FIR as per the said terms and conditions the parties applied for divorce by mutual consent. The Family Court by order dated 29-5-2013 allowed the said Marriage Petition and dissolved the marriage of the Petitioner No.1 and the

Respondent No.2 by mutual consent. Thereafter a compliance report was submitted by the parties i.e. the Petitioner No.1 herein and the Respondent No.2 on the same day i.e. 29-5-2013 which compliance report records that no claim or dues are pending in the matter and there remains no dispute between the parties and no litigation in any Court between both the parties is pending. The said recording it seems was made in view of the fact that in the terms and conditions which were arrived at before the Marriage Counsellor, the Respondent No.2 had agreed to withdraw the said Criminal Case filed under Section 498-A of the CrPC. However, in view of the fact that the offence under Section 498A is non compoundable that the Petitioner had to file the instant Petition seeking quashing of the case in question.

4 In the light of the terms and conditions which the parties have arrived at before the Marriage Counsellor and which terms and conditions have already been given effect to in the matter of obtaining divorce by mutual consent and since it has been recorded in the said terms and conditions that the Respondent No.2 i.e. the wife would withdraw the said complaint. In our view, the above Writ Petition is required to be allowed so as to give a complete effect to the terms and conditions which were arrived at before the Marriage Counsellor between the parties. It is possibly for the said reason that though the Respondent No.2 has been served in the above Petition she is not appearing and no appearance is also put up on her behalf. The above Petition

is accordingly allowed and made absolute in terms of prayer clause (a). The above Writ Petition is accordingly disposed of.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]