

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1183 OF 2016**

Vikas Subhash Kadam

..Applicant

Vs.

Vaibhavi Vikas Kadam & Anr

..Respondents

Mr. Sameer Jagtap i/b Jagtap & Jagtap for the Applicant

Mr. S. S. Redekar i/b Mr. A. V. Mahadik for the Respondent No.1

Mr. A. D. Kamkhedkar Addl PP for the Respondent State

Mr. Deepak Surve, PI, Protection Branch Mumbai present

CORAM :R. M. SAVANT, &

REVATI MOHITE DERE,JJ

DATE : 22nd JUNE, 2018

P.C.

1 The above Criminal Application filed for quashing and setting the judgment and order dated 7-6-2016 in CC No.610/PW/2009 passed by the Learned Metropolitan Magistrate 53rd Court, Mulund, Mumbai, by which the Applicant has been convicted. Though the quashing of the said proceedings being CC No.610/PW/2009 is sought by prayer clause (b) the said prayer has now been eclipsed by the conviction of the Applicant. The FIR registered against the Applicant and his parents was one under Section 498A amongst other sections. The parents of the Applicant were acquitted whereas the Applicant was sentenced to 2 years simple imprisonment.

2 The above Application has been filed in September 2016 i.e. post conviction of the Applicant. The Applicant against his conviction has gone in Appeal before the Sessions Court being Appeal No.514 of 2016 which is pending before the Sessions Court. It is during the pendency of the Appeal

that the parties have reached an amicable settlement as a consequence of which the Respondent No.1 does not desire to prosecute the Applicant for the offences which are alleged against the Applicant. The parties were also before the Family court in Marriage Petition No.A-305/2012 which was originally filed by the Respondent No.1 against the Applicant for divorce under Section 13(1)(1-a) and 13(1)(1-b) of the Hindu Marriage Act. In the said Marriage Petition the parties were referred to the Marriage Counselor before him the parties arrived at a settlement which was reduced into writing by way of Consent Terms as result of the said settlement the parties agreed to seek divorce by mutual consent. Accordingly the said Marriage Petition was converted to Petition under Section 13(b) for divorce by mutual consent. The Learned Judge of the Family Court has accordingly by judgment and order dated 7-2-2017 allowed the said Marriage Petition and dissolved the marriage of the Applicant and the Respondent No.1 by a decree of divorce by mutual consent. The Consent Terms and the modified Consent Terms were also made part of the decree. Hence the decree of divorce has also been passed after the conviction of the Applicant. The Respondent No.1 herein has filed an affidavit dated 16-12-2016 wherein she has referred to the Consent Terms and the decree passed on the said basis. She has further given her no objection to the quashing of the proceedings which are filed against the Applicant meaning thereby that she has no objection to the conviction of the Applicant being set aside.

3 The Respondent No.1 Vaibhavi Kadam is personally present in court. She is identified by the Learned Counsel Mr. Redekar. She is also identified by her Adhar Card bearing No.989751278731. When put in the box and queried she states that she accepts that she has filed the affidavit which is annexed to the writ paper book. She further states that a settlement has been arrived at between her and the Applicant as a result of which she has no objection to the conviction of the Applicant being set aside in view of the settlement.

4 The Applicant Vikas Kadam is also personally present in Court. He is identified by the Learned Counsel Mr. Jagtap. He is also identified by his Adhar Card bearing No.672241581794. He accepts the factum of settlement being arrived between him and the Respondent No.1.

5 Since the above Application has been filed post the conviction of the Applicant the issue that arises is whether this Court can exercise powers under Section 482 of the CrPC to quash the proceedings as well as set aside the conviction. The said issue is no more res-integra and is covered by the judgment of a Division Bench of this Court in the matter of **Kiran Ingale Vs. Smt. Anupama Gaikwad & Ors.**¹ The said case can be said to be on all fours with the present case. The said case also involved prosecution under Section

¹ 2006 CRI LJ 4591

498A of the IPC and conviction of the accused. The Division Bench place reliance on the judgment of the Apex Court in B. S. Joshi Vs. States of Haryana reported in AIR 2003 SC 1386 and having regard to the fact that the Applicant in the said case was in Appeal against his conviction and the Appeal being continuation of the proceedings held that there is no impediment for exercise of powers under Section 482 of the CrPC for quashing the proceedings. The Division Bench observed that the issue has to be approached with a broader perspective, as was in B. S. Joshi's case. A similar view was taken by another Division Bench in Writ Petition No.2254 of 2017 in the matter of Shishir Krushna Shirke & Ors. Vs. State of Maharashtra & Ors. which Petition was also filed for setting aside the conviction in view of the settlement.

6 Having regard to the judgment of the Division Bench in Kiran Ingale's case (supra) we deem it appropriate to exercise our jurisdiction under Section 482 of the CrPC. We accordingly set aside the judgment and order dated 7-6-2016 passed by the Learned Metropolitan Magistrate 53rd Court Mulund, Mumbai in CC No.610/PW/2009. The Application is accordingly allowed to the aforesaid extent.

7 Photocopies of the judgment and order passed by the Family court and the decree are taken on record and marked as "X" and "Y" for identification.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]