

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3986 OF 2015

Ashok Kumar Srivastava & Ors.Petitioners
V/s.
The State of Maharashtra & Anr.Respondents

Mr. Anand Mishra with Ms. Devki Sahu i/by Mr. A.M.Saraogi,
, Advocates for Petitioners.
Mrs. Anamika Malhotra, APP for the Respondent-State.
Mrs. Vidhya Iyengar with Mr. Akshay Suryawanshi, Advocates for
Respondent No.2.

**CORAM :- R.M.SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 19TH JANUARY, 2018.

PC. :-

The above Criminal Writ Petition was initially adjourned for one week as the learned counsel for the Respondent No.2 was not available and the learned counsel for the Petitioners, who was to argue the matter, was also not available. However, the learned counsel for the Respondent No.2, Mrs. Vidhya Iyengar thereafter appeared towards the close of the first Session and stated that the parties have settled the matter and, therefore, are applying for quashing by consent and that a joint affidavit of the Petitioner No.3 and the First Informant, i.e., the Respondent No.2 would be filed. Hence, the above Writ Petition was kept in the afternoon session.

2 The above Writ Petition has been filed for quashing of the FIR being No.220 of 2015 registered with the Kharghar Police Station, Navi Mumbai for the offences punishable under Sections 498A and 406 of IPC. The said FIR has arisen out of the matrimonial disputes between the Petitioner No.3-Husband and the Respondent No.2-Wife. Parties, i.e., the Petitioner No.3 and the Respondent No.2 have filed a joint affidavit wherein in paragraph 2 they have referred to the decree of divorce passed by mutual consent on 20.11.2017 and the factum of the Respondent No.2 being paid an amount of Rs.8,75,000/- on the FIR being quashed as per the Consent Terms entered into between the parties in the Domestic Violence proceedings in the Sessions Court at Alibag. In the context of the present Writ Petition, paragraph 4 of the said affidavit dated 19.1.2018 is material and is re-produced hereunder:

“4 That both the Petitioner No.3 and the Respondent No.2 have mutually decided to quash the present FIR case by consent, filing the present affidavit. Therefore, they pray this honourable court for quashing of the FIR Case-RCC 300/2016.”

To the said affidavit is annexed Exhibit 7K which is a document regarding the terms and conditions of the settlement arrived at between the parties on 29.4.2017 before the learned Sessions Judge, Raigad, District: Alibag in Criminal Application

No.85 of 2016. Clause (III) of the terms and conditions of Compromise provides for withdrawal of all the pending litigations between the parties. The Petition for divorce by mutual consent being HMP No.246 of 2017 has been allowed by the learned Judge by the order dated 20.11.2017 of which certified copy has been annexed to the joint affidavit dated 19.1.2018 filed by the Petitioner No.3 and the Respondent No.2. To the said affidavit is also annexed the application by the Petitioner No.1, who is the father of the Petitioner No.3 for being permitted to deposit the amount of Rs.8.75 Lakhs and the said DD to be handed over to the Respondent No.2 only after the withdrawal of all the pending cases. The Respondent No.2 is personally present in Court. She is identified by the learned counsel Mrs. Vidhya Ayyengar. She is also identified by her Adhar Card bearing No.2419 8387 6865. When put in the box and queried, she states that she has understood the contents of the joint affidavit dated 19.1.2018 and that she has amicably settled the matter with the Petitioner No.3, i.e., Ashish Ashok Srivastava and it is on account of the said settlement that she seeks quashing of the FIR. The Petitioner No.3 is personally present in Court. He is identified by the learned counsel Mr. Anand Mishra. He is also identified by Adhar Card bearing No.7689 1454 1459. When put in the box and queried,

he states that the contents of the affidavit are understood by him and that he has settled the matter with his wife, i.e., the Respondent No.2 herein on account of which she does not want to proceed with the FIR. The Petitioner Nos.1 and 2 are also present in Court. However, it is not necessary to record their statements as main contesting parties are the Petitioner No.3 and the Respondent No.2. Having regard to the joint affidavit filed by the Petitioner No.3 and the Respondent No.2 as also having regard to the statements made by them when put in the box, it is clear that the parties have settled their disputes and in fact, they have obtained divorce by mutual consent on 20.11.2017. Having regard to the judgments of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in (2012) 10 SCC 303 would also lead to the same conclusion. No useful purpose would therefore be served by keeping the proceedings pending. The above Writ Petition is required to be allowed and is, accordingly, allowed and made absolute in terms of prayer clause (a). The FIR is quashed against all the Petitioners. The Petitioner No.3 to deposit costs of Rs.10,000/- as also the

Respondent No.2 to deposit costs of Rs.10,000/- with the Maharashtra Legal Aid Fund within a period of four weeks from date. Receipt to be obtained and filed in the Registry.

(SANDEEP K. SHINDE, J.)

(R.M.SAVANT, J.)