

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

CRIMINAL WRIT PETITION NO.4607 OF 2017

Sameer Ramakant Thorat and ors. : Petitioners.
Versus
State of Maharashtra and anr. : Respondents.

Mr. Ganesh S Patil for the Petitioners.
Mrs. A S Pai, Addl.PP for the Respondent/State.
Mr. Jitendra Gaikwad for the Respondent No.2

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.**
DATE : 22nd FEBRUARY 2018

P.C.

1 The above Writ Petition has been filed for quashing of the proceeding being RCC No.452 of 2017 pending on the file of the learned Judicial Magistrate First Class, Malegaon arising out of the FIR being No.I-40 of 2017 registered on 08/05/2017 by the Camp Police Station Malegaon, Nashik for the offences punishable under Sections 498A, 406, 323, 504 and 34 of the Indian Penal Code.

2 The parties were before this Court in Misc. Civil Application No.168 of 2017 which was filed by the Respondent/Wife for transfer of the Marriage Petition filed by the Appellant-husband. In the said proceedings the parties have arrived at a settlement which is recorded in the order dated 13/09/2017 passed by a learned Single Judge of this Court (S.J. Kathawalla,

J). Clauses 1(iii) and 1(iv) of the said Consent Terms are material in the context of the relief sought in the instant Writ Petition. The same are reproduced herein under for the sake of ready reference :-

1(iii) The parties and their Advocates shall appear before the Court of Civil Judge, Senior Division, Kalyan, on 8th November, 2017, when the Learned Judge shall allow the parties to convert the Hindu Marriage Petition No.1481 of 2016 into a petition for divorce by mutual consent and the Learned Judge shall forthwith grant divorce by mutual consent to the parties. However, before granting the decree of divorce, the learned Judge shall ensure that the amount of Rs.7,00,000/- is paid to the Applicant-wife by the Respondent.

1(iv) On 13th November, 2017, the Respondent shall approach this Court with a quashing Petition and shall move for quashing of the proceedings filed by the Applicant under Section 498 of the Code of Criminal Procedure, being C.R.No.40 of 2017. On that day, the Applicant shall remain present in Court and give her consent to the quashing of the Complaint.”

3 The Respondent No.2, who is the First Informant, has also filed an Affidavit dated 08/11/2017 which is sworn before the Notary Public Shri Abhin P Gaikwar having his address at Mrunal Niwas, Dawadi Road, Golavali, Tal.Kalyan, Dist.Thane and the affidavit bearing registration No.5972 dated

08/11/2017. In the context of the present Writ Petition clause 9(a) of the said affidavit which in the nature of the prayer is relevant and is reproduced herein under :-

“9 It is therefore prayed that this Hon'ble Court may be pleased:-

(a) To quash the FIR No.40 of 2017 and the charge sheet bearing RCC No.452 of 2017, which was registered with Camp Police Station Malegaon, Nasik, for the offence under Section 498-A, 406, 323, 504 r/w 34 of the Indian Penal Code against all the Petitioner No.01 to 07.”.

4 Hence reading of clauses 1(iii) and 1(iv) of the Consent Terms which have been recorded by the learned Single Judge of this Court and the affidavit of the Respondent No.2 dated 08/11/2017, the same indicate that the parties have arrived at a settlement and as a consequence of which the Respondent No.2 does not desire to proceed with the case in question.

5 The Respondent No.2 Hemlata Sameer Thorat is personally present in Court, she is identified by her counsel Shri Jitendra Gaikwad. She is also identified by her Aadhar Card which stands in her maiden name Hemlata Dhanraj Ahire bearing No.936208787884. When put in the box and queried, she reiterates the fact of the settlement arrived at between the parties and filing of the Consent Terms before the learned Single Judge of this Court. She further states that the affidavit tendered today by her counsel is hers and that she has understood the contents of the said affidavit and that she has filed the

said affidavit of her own free will and volition.

6 The Petitioner No.1 – Sameerr Ramakant Thorat is personally present in Court, he is identified by his counsel Shri Ganesh Patil. He is also identified by his Aadhar Card bearing No.411768011475. When put in the box and queried he accepted the factum of the Consent Terms being filed before the learned Single Judge of this Court. He further states that it is in view of the settlement arrived at between the parties, that the Respondent No.2 does not desire to proceed with the case in question.

7 Having regard to the affidavit filed by the Respondent No.2, the Consent Terms and the statements made by the Respondent No.2 and the Petitioner No.1 when put in the box and queried, the same unequivocally lead to a conclusion that the parties have settled the matter and therefore no useful purpose would be served in keeping the proceedings in question pending.

8 Having regard to the judgments of the Apex Court in the matter of Gian Singh V/s State of Punjab & Anr reported in (2012) 10 SCC 303 and Narinder Singh & ors v/s. State of Punjab & Anr reported in 2014 AIR SCW 2065, there is no impediment in allowing the above Criminal Writ Petition. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (b). The above Criminal

Writ Petition is accordingly disposed of. The Petitioner No.1 to deposit the costs of Rs.1000/- with the Kirtikar Law Library, High Court, Bombay within four weeks from date. Receipt to be obtained and filed in the Registry of this Court.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]