

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4657 OF 2017**

Rajendra Babulal Upadhyay & Ors

..Petitioners

Vs.

The State of Maharashtra & Anr

..Respondents

Mr. Sushil Shukla for the Petitioners

Mr. Syed Ejas Abbas Naqvi i/b Mr. Viral Kothari for the Respondent No.2

Mr. K. V. Saste Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL,JJ
DATE : 8th MARCH, 2018**

P.C.

1 The above Criminal Writ Petition has been filed for quashing of the proceeding being C.C. No.1862/PW/2015 arising out of FIR No.159 of 2015 registered with the Samta Nagar Police Station, Mumbai for offences punishable under Sections 498A, 406 read with 34 of the IPC. The said FIR it seems has arising out of the matrimonial disputes between the Petitioner No.3 and the Respondent No.2 who are husband and wife. The parties were also before the Family Court in Marriage Petition No.A-1907 of 2015 which was filed by the Respondent No.2 herein for divorce on the ground of cruelty under the Special Marriage Act. The parties arrived at Consent Terms in the said Marriage Petition No.A-1907 of 2015 and consequently had agreed to dissolve their marriage by mutual consent under Section 28 of the Special Marriage Act, 1954, by converting the said Marriage Petition into the Petition for divorce

by mutual consent. In the context of the relief sought in the above Writ Petition, clauses 8 and 13 of the said Consent Terms are material and are therefore reproduced hereinunder:

8. It is agreed that the Petitioner will appear before Hon'ble Bombay High Court and/or appropriate Court in any Criminal Complaint/Case filed pursuant to the said FIR No.159 of 2015 of Samata Nagar Police Station and/or any other police complaint and pray for dismissal/quashing of such case/proceedings on the basis of amicable Settlement/Consent Terms reached in this Petition at Respondent own costs and expenses. The Petitioner agrees and undertakes to this Hon'ble Court, to co-operate with the Respondent in such process of quashing/dismissal. It is agreed that all the costs and expenses in respect of such quashing/dismissal, will be borne and paid by the Respondent and the Petitioner will not be liable to pay/share or reimburse any of such costs/expenses.

13. It is agreed that within one week of the passing of the order of quashing/dismissal of the Criminal Complaint/Case/FIR as above said, both the parties will move this Hon'ble Court for passing of Decree of Divorce in this Petition as per these Consent Terms. The Petitioner and the Respondent (through the Constituted Attorney) undertake to this Hon'ble Court to remain personally present at that time and unconditionally consent for passing of the decree of divorce and for passing of order for release of Rs.2,00,000/- (Rupees Two Lakh only) deposited in this Hon'ble Court and interest earned if any in favour of the Petitioner.

2 The Respondent No.2 i.e. the first informant has also filed an affidavit dated 3-11-2017 and sworn in this Court on the said day. In the

context of the said present Petition paragraphs 6 and 7 of the said affidavit are material and are reproduced hereinunder:

6. I say that I have consented for mutual consent divorce and accordingly executed and filed the Consent Terms dated 06/09/2017 in the 4th Family Court at Bandra. I say that I shall not assert any further claim or demand for any damages or institute any other proceedings against the Petitioners.

7. I say that I am physically present before this Hon'ble Court, whilst filing this affidavit in order to express my consent for the withdrawal of my complaint and FIR being FIR No.159/2015, registered at the Samata Nagar Police Station, Mumbai against the all Petitioners.

3 Hence the reading of the Consent Terms filed in the Family Court as well as the affidavit dated 3-11-2017 filed by the Respondent No.2 herein, the same unequivocally point out that the parties have settled the matter as a consequence of which the Respondent No.2 is desirous of pursuing the Criminal Case which is arising out of the FIR registered by her.

4 The Respondent No.2 Omi Upadhyay is personally present in Court. She is identified by the Learned Counsel Mr. Naqvi. She is also identified by her Election Commission ID No.YBB2108066 which is in her maiden name Omi Ramesh Dave. When put in the box and queried she states that the Consent Terms are acceptable to her and that she has signed them of

her own free will and volition. She further states that the affidavit dated 3-11-2017 which has been tendered in this Court is hers and whatever has been stated in the said affidavit is acceptable to her and that she has signed the said affidavit of her own free will and volition.

5 The Petitioner No.3 Vishal Upadhyay i.e. the husband is in the United States of America and therefore is not in a position to remain present. However his father i.e. the Petitioner No.1 Rajendra Upadhyay is personally present in Court. He is identified by the Learned Counsel Mr. Shukla. He is also identified by his Pancard being No.AAPU3747L. When put in the box and queried, he accepts the factum that the Consent Terms have been entered into between the Petitioner No.3 i.e. his son and the Respondent No.2 his daughter in law. Hence the statements made by the Respondent No.2 as also the Petitioner No.1 when put in the box and queried indicate that the parties have settled the matter. Having regard 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 & Anr**², there is no impediment in allowing the above Writ Petition. No useful purpose would be served in keeping the proceedings pending, the above Writ Petition is accordingly allowed and made absolute in terms of prayer clause (b). The above Writ Petition is accordingly disposed of.

1 (2012) 10 Supreme Court Cases 303

2 2014 AIR scw 2065

6 Since the machinery of this court is utilised to settle the dispute between the parties, the Petitioners to pay costs of Rs.20,000/- to be deposited with the Maharashtra Legal Aid Fund, within 6 weeks from date. Receipt to be obtained and filed in the registry.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]