

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4984 OF 2017

Mr. Sumit Harshvardhan Mason & Ors.] ... Petitioners

Versus

Mrs. Amrit Sumit Mason & Anr.] ... Respondents

Ms. Pinaz C. Contractor for Petitioners.

Mr. Tariq Khan for Respondent No.1.

Ms. S. V. Sonawane, APP for State - Respondent No.2.

**CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE :- 09 MARCH, 2018

P. C. :-

1. Leave to amend so as to incorporate prayer clause (aa).

Amendment to be carried out forthwith.

2. The above Writ Petition has been filed for quashing of the charge-sheet bearing no.1746/PW/2014 arising out of the F.I.R. bearing no.129 of 2016 registered with the R.C.F. Police Station, Mumbai, for the offences punishable under Sections 498A and 406

read with 34 of the IPC. It seems that the said F.I.R. has arisen out of the matrimonial dispute between the Petitioner No.1 and the first informant i.e. the Respondent No.1 herein who are husband and wife. The parties were also before the Family Court in Marriage Petition No.A-3116 of 2014 which was initially filed for divorce on the ground of cruelty by the Petitioner No.1. In the said proceedings, the parties arrived at Consent Terms which were marked as Exh.22 by the Family Court which Consent Terms evidenced the settlement arrived at between the parties. In terms of the said Consent Terms and especially Clause 5 thereof, the Respondent No.1 herein had undertaken that she would not further prosecute the criminal proceedings and that she would extend her co-operation for disposal of the criminal case. The parties had also agreed to obtain divorce by mutual consent by seeking conversion of the said Marriage Petition to a Petition for divorce by mutual consent. The Family Court accordingly, by a Decree and Order dated 27/12/2016, passed a Decree of dissolution of the marriage between the Petitioner No.1 and the Respondent No.1 by a Decree of divorce by mutual consent, under Section 13-B of the Hindu Marriage Act, 1955. The said Judgment and Order is annexed to the Petition from pages 53 to 57. A Decree

has accordingly been drawn up which is annexed at Exh.D from pages 49 to 52. The Respondent No.1 has also filed her Affidavit dated 18/08/2017 and affirmed before S. Tabrez Jabali, Notary, Government of India, having registration no.10535, having his office at Hussain House, Sahakar Baug, Paily Pada, Trombay, Mumbai – 400088. The Affidavit is entered at Sr.No.87 dated 10/08/2017. In the context of the reliefs sought in the above Petition, paragraphs 4 and 5 of the said Petition are material and are reproduced hereinunder :

“4. I say that I have now settled my dispute amicably with the Petitioners and have no grievance against any of the accused persons named in C.R.No.129 of 2015 registered at my instance by R.C.F. Police Station against the accused persons therein.

5. I say that I have executed consent terms with Petitioner No.1 and do not wish to continue the prosecution of the accused persons named in C.R.No.129 of 2015 registered at my instance by R.C.F. Police Station.”

3. The Respondent No.1 Mrs. Amrit Sumit Mason is personally present in Court. She is identified by the learned Counsel Mr. Tariq Khan who undertakes to file Vakalatnama on her behalf. The Respondent No.2 is also identified by her Aadhar Card bearing No.8970 3046 6127. When put in the box and queried, she states that

she accepts the factum of a Decree of divorce being passed by the Family Court, Mumbai. She further states that she has read and understood the contents of the Affidavit dated 17/08/2107 which is annexed to the above Petition and that she has signed the said Affidavit of her own free will and volition. The husband i.e. Petitioner No.1 Mr. Sumit Harshvardhan Mason is also personally present in Court. He is identified by learned Counsel Ms. Pinaz Contractor. He is also identified by his Aadhar Card bearing no.6775 5110 0274. When put in the box and queried, he accepts the factum of the Decree of divorce being passed by the Family Court pursuant to the Consent Terms filed by the parties wherein the settlement has been recorded between the parties. Hence, the factum of the Decree being passed by the Family Court under Section 13-B of the Hindu Marriage Act, 1955, the Affidavit filed by the Respondent No.1 Mrs. Amrit Sumit Mason and the statements made by the Petitioner No.1 and the Respondent No.1, the same unequivocally indicate that the parties have settled the dispute as a consequence of which the Respondent No.2 does not desire to proceed with the case in question.

4. Having regard to the Judgments of the Apex Court in the cases of Gian Singh Vs. State of Punjab & Anr. reported in (2012) 10 SCC 303 and Narinder Singh & Ors. Vs. State of Punjab & Anr. reported in 2014 AIR SCW 2065, there is no impediment in allowing the above Writ Petition. No useful purpose would be served in keeping the Writ Petition pending. The Writ Petition is allowed and made absolute in terms of prayer clause (aa).

5. In the facts and circumstances of the case, where the machinery of this Court is utilized for settling the dispute between the parties, the Petitioners to deposit costs of Rs.10,000/- with the Maharashtra Legal Aid Fund within six weeks from date. Receipt to be obtained and filed in the Registry.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)