

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1233 OF 2017**

Dhaval Kamlesh Shah & Ors

..Applicants

Vs.

State of Maharashtra & Anr

..Respondents

Mr. Datta Mane for the Applicants

Mr. S. S. Karmarkar a/w Ms Supriyanka Maurya for the Respondent No.2

Mrs. A. S. Pai Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ**

DATE : 13th JUNE, 2018

P.C.

1 The above Petition has been filed for quashing of the proceeding being C. C. No.1851/PW/2014 pending on the file of the Learned Metropolitan Magistrate 17th Court, Boriavli, Mumbai, which has arisen out of the FIR No. 5 of 2014 registered with the Samata Nagar Police Station, for the offences punishable under Sections 489A, 406 r/w 34 of the Indian Penal Code, 1860. The said FIR in turn has arisen on account of the matrimonial dispute between the Applicant No.1 and the Respondent No.2 who are husband and wife.

2 The parties were involved in proceedings filed under the Domestic Violence Act by the Respondent No.2 herein. The said proceedings had

reached the Sessions Court by way of an Appeal being No.14 of 2016, which was filed by the Respondent No.2 herein. In the said proceedings, the parties arrived at a settlement which was reduced into writing by way of the Consent Terms dated 13-10-2017. The said Consent Terms have been signed by the parties as well as their Advocates. In the context of the relief sought in the above Application, clauses 4 and 5 of the said Consent Terms are material and are reproduced hereinunder:

4. That, the Appellant undertakes to appear before the Hon'ble High Court of Judicature at Mumbai and filed her Affidavit in support of the Application for quashing of the CC No.1851/PW/2014 to be filed at the instance of the Respondents herein, wherein the said case is presently pending before the the learned Counsel appearing for the. Metropolitan Magistrate's 17th Court at Borivali, Mumbai, wherein the Respondents undertake to file such quashing petition within span of one month from the date of this Consent Terms.

5. That the Respondent No.2 and 3 undertake to pay on behalf of their son i.e. the Respondent the remaining amount of permanent alimony comprising of Rs.4,00,000/- (Rupees Four Lakhs only) by way of Pay Order / Demand Draft in favour of the Appellant herein, within span of two months from the date of this Consent Terms or at the time of quashing of the CC No.1851/PW/2014 before the Hon'ble High Court of Judicature at Mumbai, whichever is earlier.

The Consent Terms contained other terms and conditions which we are not presently concerned with except the condition of payment of permanent alimony of Rs.5 lacs to the Respondent No.2.

3 The first informant i.e. the Respondent No.2 has filed an affidavit which has been affirmed in this Court on 5-5-2018. In the context of the relief sought in the above Petition paragraph 10 of the said affidavit is material and is reproduced hereinunder.

10. I am swearing this Affidavit to support the Application of the Applicant herein to quash the proceedings against the Applicants herein, in connection to C. R. No.05 of 2014 lodged with Samata Nagar Police Station, Mumbai, presently pending before the the learned Counsel appearing for the. Metropolitan Magistrate's 17th Court at Borivali, Mumbai, bearing CC No.1851/PW/2014.

4 The Respondent No.2 Unnati Dhaval Shah is personally present in Court. She is identified by the Learned Counsel Mr. Karmarkar. She is identified by her Driving Licence bearing No.MH-02 20070000287 issued on 2-2-2007 and valid till 1-2-2027. When put in the box and queried, she accepts the factum of the Consent Terms being executed between the parties before the Sessions Court. She further states that in terms of the Consent Terms, she has already received an amount of Rs.1 lacs from the Applicant No.1. She further states that she has read and understood the contents of the said affidavit and that she has signed the said affidavit of her own free will and volition. Lastly she states that it is on account of the settlement between the parties that she does not want to proceed with the case in question.

5 The Applicant No.2 Kamlesh Shah who is the father of the

Applicant No.1, is personally present in Court. He states that the Applicant No.1 is out of India as he is employed in Kenya. He accepts the factum of the settlement arrived at between the parties and that it is acceptable to the Applicant No.1. He lastly states that it is in view of the settlement the Respondent No.2 does not desire to proceed with the case in question.

6 The other Applicants are also personally present in Court. However, it is not necessary to record their statements in view of the statement recorded of the Applicant No.2 who is the father of the Applicant No.1.

7 The Learned Counsel appearing for the Applicants hands over a draft drawn on Bank of India dated 11-6-2018 for the sum of Rs.4 lacs which is the residual amount payable to the Respondent No.2 as permanent alimony / maintenance in terms of the Consent Terms. The Learned Counsel for the Respondent No.2 accepts the said draft on behalf of the Respondent No.2 to be handed over to her. Photocopy of the said demand draft is taken on record and marked as "X" for identification.

8 Having regard to the Consent Terms dated 13-10-2017 and the affidavit filed by the Respondent No.2, the statements made by the Respondent No.2 and the Applicant No.2 when put in the box and queried, the same indicate that the parties have settled their dispute as a result of which the

Respondent No.2 does not desire to proceed with the FIR in question. Having regard to the judgments of the Apex Court in the matter of **Gian Singh V/s State of Punjab & Anr¹** and **Narinder Singh & ors v/s. State of Punjab & Anr²**, no useful purpose would be served in the proceeding with FIR in question. The above Criminal Application is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Application is accordingly disposed of.

9 The Applicants to deposit costs of Rs.25,000/- with the State Legal Aid Fund within 6 weeks from date. Receipt to be obtained and filed in the registry.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

1 (2012) 10 SCC 303

2 2014 AIR SCW 2065