

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

CRIMINAL APPLICATION NO.1237 OF 2018

Ganesh Lakhan Panigrahi & Ors. ..Applicants
V/s.
The State of Maharashtra & Anr. .. Respondents

Mr.H.M. Inamdar for the Applicants.

Mr.F.R. Shaikh, APP for the Respondent-State.

Ms.Shamamat Kazi for Respondent No.2.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 15th JULY 2019

P.C.

1. The learned counsel for the applicants, at the outset, seeks leave to amend the prayer clause and prayers, since, the petition is at the admission stage. Leave granted. Necessary amendment shall be carried out forthwith.

2. Heard learned counsel for the applicants, respondent No.2 and the learned APP.

3. The applicants are seeking quashment of the judgment, by consent, dated 22.04.2016 passed by the Chief Judicial Magistrate,

Thane in RCC No.401 of 2014.

4. The applicant No.1 and respondent No.2 are ex-husband and wife. Rest of the applicants are relatives of applicant No.1.

5. Matrimonial discord between the parties gave rise to filing of several Criminal as well as Civil cases. The subject matter of the present application is one of them. Criminal proceedings emanated from registration of FIR bearing C.R. No.80 of 2014 with Thane Nagar Police Station at the instance of respondent No.2 for an offence punishable under Sections 498(A), 406, 506 read with 34 of the Indian Penal Code. This FIR was investigated and thereafter charge-sheet was filed which was numbered as Criminal Case bearing RCC No.0300401 of 2014. This case was disposed of by learned Chief Judicial Magistrate on 22.04.2016. The applicants are convicted for an offence under Section 498A of Indian Penal Code and sentenced to suffer six months rigorous imprisonment. The accused are also directed to pay fine of Rs.2,000/- and in default and to suffer rigorous imprisonment for one month. Other two accused namely Kalucharan Lakhan Panigrahi and Sangita Shivshankar Panigrahi are acquitted by the Court for an offence punishable under Section 498A.

6. The applicants thereafter have filed an appeal bearing Criminal Appeal No.47 of 2016, which is at present pending before Additional Sessions Judge. The appellants in the said Appeal have filed an application below Exhibit Nos.4 and 5 for bail and by order dated 27.04.2016 learned Additional Sessions Judge, Thane was pleased to suspend the substantive sentence imposed by the learned Chief Judicial Magistrate and they are directed to be released on bail on condition by furnishing PR Bond of Rs.15,000/-.

7. Meanwhile, the applicant No.1 and respondent No.2 have filed a petition under Section 13B of the Hindu Marriage Act for divorce by mutual consent before the Family Court at Thane bearing Petition No.F-420 of 2018. This petition was disposed of by learned Judge of the Family Court, Thane by judgment dated 03.04.2019 and the common application of applicant No.1 and respondent No.2 was granted by which the marriage between them came to be dissolved.

8. The applicant No.1 agreed to pay to respondent No.2 an amount of Rs.32,50,000/- towards full and final settlement, out of which an amount of Rs.10,00,000/- is paid to the respondent No.2

and balance amount of Rs.22,50,000/- has been deposited in the Family Court, Thane. This amount is to be given to the respondent No.2 after quashing the subject case instituted by her.

9. The parties thereafter have decided to settle all the disputes between themselves amicably and in pursuance of this understanding they have approached this Court for quashing the judgment dated 22.04.2016 passed by the Chief Judicial Magistrate, Thane in RCC No.401 of 2014.

10. The respondent No.2 has filed affidavit dated 15.07.2019 wherein she has reiterated whatever is stated herein above and in paragraph No.5 she has given her no objection for setting aside the judgment. The respondent No.2 is personally present in the Court.

The applicant No.1 is also present in the Court. He stated that he has no objection for respondent No.2 withdrawing the amount of Rs.22,50,000/- deposited by the applicant No.1 in the Family Court Thane, once the subject criminal case is quashed and set aside. Statement is accepted.

11. It is true that the applicants have approached this Court after

their conviction by the Trial Court for offence punishable under Section 498(A) r/w Section 34 of Indian Penal Code. The applicants in this regard have relied upon decision of the Division Bench of this Court in case of *Kiran Tulshiram Ingale Vs. Smt.Anupama P. Gaikwad and others reported in 2006 Cri.L.J.4591*, as well as the decision of Division Bench in *Writ Petition No.2356 of 2017 (Nilesh Suresh Mhatre and others Vs. The State of Maharashtra and another), dated 5th July 2017* to contend that even after conviction, the Court can quash criminal proceedings. Having gone through the said judgments, we find that the statement of the applicants is supported by the said decisions.

12. It can thus be seen that the matter has been amicably settled between the parties. Perusal of the complaint makes it clear that the allegations are totally personal in nature. The entire dispute between the parties is of private nature and does not have any bearing on the society at large. The dispute arises out of matrimonial differences. The Appellate Court cannot compound or quash the proceedings since the offence under Section 498A of IPC is non-compoundable. The powers for quashing can be exercised only by this Court. The parties have compromised the dispute in the present case, even though after conviction. However, the

proceedings of appeal are pending. Irrespective of this, the parties have now arrived at a settlement.

13. In the light of the above, conviction order dated 22.04.2016 passed by the Chief Judicial Magistrate, Thane in RCC No.401 of 2014 is quashed and set aside, in the interest of justice.

14. In view of the quashing and setting aside of the conviction order dated 22.04.2016, Criminal Appeal No.47 of 2016 pending on the file of the learned Additional Sessions Judge, Thane is also disposed of. Bail bonds of the parties stand cancelled.

15. The respondent No.2 is at liberty to make an application to the Family Court, Thane for withdrawal of an amount of Rs.22,50,000/- and, in the event such application is made within a period of two weeks from today, the Family Court shall pay the said amount to the respondent No.2.

16. The criminal application is disposed of in the aforestated terms.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)