

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5431 OF 2018**

Mr.Sandeep Rajkumar Chamadia and ors.Petitioners
versus
The State of Maharashtra and ors.Respondents

Ms. Pooja Joshi i/b. Mr. A. M. Saraogi, advocate for the petitioners.
Mr. Deepak Thakare, PP along with Ms. Sangita Shinde, APP for the State.
Mr. Milan Desai, advocate for respondent Nos.2 and 3.

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

DATE : 3rd JULY, 2019.

P. C. :

Learned counsel for the petitioners, at the outset, stated that the petitioner No.2 has expired and therefore, she seeks permission to delete the name of petitioner No.2. Leave as prayed for, is granted. Necessary amendment be carried out forthwith.

2. The petition is filed for quashing and setting-aside criminal case bearing 2400081/PW/2013 pending on the file of Additional Chief Metropolitan Magistrate, 24th Court at Borivali, Mumbai. The said case arises out of registration of FIR No.24 of 2012 with Charkop Police Station at the instance of respondent No.2 for the offences punishable

under Sections 498A, 406, 377 and 34 of the Indian Penal Code, 1860 and Section 4 of Dowry Act.

3. Petitioner No.1 and respondent No.2 got married on 16th February, 2010. Petitioner No.3 is the mother of petitioner No.1 and respondent No.3 is brother of petitioner No.1. Matrimonial dispute between the parties gave rise to filing of several criminal and civil case and the subject matter of the present petition is one of them. The parties, however, with the intervention of elders and well-wishers, arrived at settlement and accordingly, entered into Memorandum of Undertaking/Settlement dated 18th August, 2018, a copy of which is annexed at Exhibit B, page 29. The MOU/Settlement Terms are signed by petitioner No.1 and respondent No.2. Under the said MOU/Settlement Terms, the petitioner No.1 and respondent No.2 have agreed to obtain divorce by mutual consent. Accordingly, their marriage is dissolved by judgment and decree dated 29th September, 2018 passed by the Principal Judge, Family Court, CCC, Hyderabad.

4. Under the MOU/Settlement Terms the parties have also agreed for quashment of the subject criminal case and, therefore, they have approached for quashing by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. Respondent No.2 has filed an affidavit dated 3rd July, 2019. In paragraph 19, she has given her no

objection to quash the proceedings of the subject criminal case. Petitioner Nos.1 and 3 and respondent No.2 are present before the Court. They make a statement that they will abide by the terms and conditions of the MOU/Settlement referred above. The statement is accepted as undertaking to this Court. In addition to this, respondent No.2 also stated that she has given no objection for quashing the proceedings of the subject criminal case on her own free will and without there being any pressure or coercion.

5. At this stage, learned counsel for respondent No.2, pointed out clause 4(e) of the MOU/Settlement terms dated 18th August, 2018 which reads thus :

“4.

e. The total amount of Rs.39.50 lakhs (Rupees Thirty Nine Lakhs Fifty Thousand Only) as one time settlement is arrived at as under:

- I. Demand Draft of Rs.13.50 Lakhs.
- ii. Fixed Deposit of Rs.16.70 Lakhs.
- lii. Ornaments/Jewellery of Rs.9.30 Lakhs.”

Thus, in terms of the above clause, respondent No.2 is entitled to receive from petitioner No.1, an amount of Rs.39,50,000/- by way of Demand Draft/Fixed Deposit/Ornaments etc. The demand draft for the amount of Rs.39,50,000/- is deposited in the Court of Principal Judge, Family Court, CCC, Hyderabad in O.P. No.1502 of 2012. The learned

counsel for the petitioner submits that the petitioners have no objection if the same is refunded along with interest accrued thereon to respondent No.2. It is also submitted that pursuant to the order dated 24th February, 2012 passed by learned Single Judge in Criminal Anticipatory Bail Application No.174 of 2012, petitioner No.3 deposited an amount of Rs.10,70,000/-in Fixed Deposit in the year 2012 in State Bank of India, Malad Branch . The parties make a statement that the maturity proceeds of the said deposit along with interest as on 31st March, 2018 was Rs.16,70,000/-. Petitioner Nos.1 and 3 have no objection if the said amount of Rs.16,70,000/- is withdrawn by Respondent No.2. So far as ornaments/jewellery of Rs.9.30 lakhs is concerned, the same is kept in safe custody of respondent No2 in the locker of State Bank of India, Malad Branch in pursuance of the order dated 24th February, 2012 and 5th March, 2012 passed in Criminal Anticipatory Bail Application No.174 of 2012. The petitioners have no objection if the said ornaments are retained by respondent No.2. In that view of the matter, we issue following directions :

1. Respondent No.2 is permitted to withdraw the amount of Rs.39,50,000/- which is deposited in the Court of Principal Judge, Family Court, CCC, Hyderabad in O.P. No.1502 of 2012.

2. Respondent No.2 is also permitted to withdraw the liquidated Fixed Deposit amount mentioned in clause 4(e) of MOU/Settlement Terms.
3. Respondent No.2 is allowed to retain the ornaments mentioned above.

We modify the orders dated 24th February, 2012 and 5th March, 2012 passed by learned Single Judge of this Court in Criminal Anticipatory Bail Application No.174 of 2012 to that extent.

6. 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. In these circumstances and especially in view of the law laid down by the Apex Court in the case of **B.S.Joshi versus State of Haryana AIR 2003 SC 1386**, we are of the view that quashing of the criminal proceedings would be in the interest of respondent No.2. Besides, no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the proceedings of the subject criminal case are required to be quashed and set-aside. Thus, criminal case bearing 2400081/PW/2013 pending on the file of Additional Chief Metropolitan Magistrate, 24th Court

at Borivali, Mumbai and arising out of registration of FIR No.24 of 2012 with Charkop Police Station filed at the instance of respondent No.2 against the petitioners and respondent No.3 is quashed and set-aside.

7. The writ petition is accordingly disposed off.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]