IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO.5685 OF 2020

BETWEEN:

1. MOHSIN SALAM
   S/O ABDUL SALAM
   AGED ABOUT 35 YEARS
   R/O FLAT NO.204, PRESTIGE CHALET
   AGA ABBAS ALI ROAD
   YELLAPPA CHETTY LAYOUT
   HALASURU, BENGALURU-560042

2. LAILA BEGUM
   AGED ABOUT 66 YEARS
   R/O THENAMACKAL HOUSE
   POOTHAKUZHI KANJIRAPALLY
   KOTTAYAM DISTRICT
   KERALA-686507.

3. NAZEERUDDIN
   AGED ABOUT 68 YEARS
   R/O THENAMACKAL HOUSE
   POOTHAKUZHI KANJIRAPALLY
   KOTTAYAM DISTRICT
   KERALA-686507

4. KULSUM FATHIMA
   D/O NAZEERUDDIN
   AGED ABOUT 23 YEARS
   R/O THENAMMAKAL CSR HOSUE
   POOTHAKUZHI, KANJIRAPALLY PO
   KOTTAYAM, KERALA-686507

5. MOHAMMED ISMAIL
   AGED ABOUT 47 YEARS
   R/O THENAMACKAL HOUSE
   POOTHAKUZHI HOUSE

KANJIRAPALLY PO
KOTTAYAM, KERALA - 686507

6. REENA ISMAIL
W/O MOHAMMAD ISMAIL
AGED ABOUT 44 YEARS
R/O THENAMAKKAL
POOTHAKUZHI, KANJIRAPALLY PO
KOTTAYAM, KERALA - 686507

7. SHEREEN WAHAB
AGED ABOUT 44 YEARS
WIFE OF ABDUL WAHAB
SEETHAKATHI STREET
SAMMANDAPURAM
VIRUDHUNAGAR
TAMIL NADU-626117. ...PETITIONERS

(BY SMT. JAYASHREE NARASIMHAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY WOMEN POLICE STATION
EAST RANGE BANGALORE CITY
REPRESENTED BY POLICE INSPECTOR

2. KHATEEJA AFRAH
W/O MOHSIN SALAM
FLAT NO.101
HAVELOCK FERNDALE APARTMENT
KANAKANAGARA, R.T. NAGAR
BENGALURU CITY-560092 … RESPONDENTS

(BY SRI.VIKAS.M, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C, PRAYING TO QUASH THE FIR NO.33/2020 DATED 29.02.2020 U/S 323, 420, 354, 498-A R/W SEC. 3 AND 4 OF IPC SEC. 3 AND 4 OF THE DP ACT AND SEC. 3 AND 4 OF MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 REGISTERED AT PULAKESHINAGAR POLICE

STATION, BENGALURU CITY AND THE PROCEEDINGS EMANATING THEREFROM.

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THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for quashing of FIR No.0033/2020 dated 29.02.2020 registered by Pulakeshinagar Police Station for the offences punishable under Sections 323, 420, 354, 498A read with Section 34 of IPC, Sections 3 and 4 of the Dowry Prohibition Act and Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

2. During the pendency of the above matter, the parties have entered into a settlement. A copy of the settlement deed dated 24.06.2020 has been produced before this Court.

3. Smt.Khateeja Afrah-respondent No.2 is before this Court through video conferencing identified by her counsel Sri.Vikas M., learned Counsel for respondent No.2. Petitioners are before this Court through video conferencing identified by their counsel Smt.Jayashree Narasimhan, learned counsel for the petitioners.

4. Smt.Khateeja Afrah – respondent No.2 submits that she and the petitioners have resolved their disputes. She has received all items belonging to her from the petitioners and the marriage between respondent No.2 and 1st petitioner is dissolved by way of pronouncement of talaq on 20.01.2020, 21.02.2020 and 04.06.2020. She confirms the receipt of Rs.10,00,000/- prior to today and a sum of Rs.35,00,000/- by way of demand draft received today. She states that she has no other or further claims against the petitioners.

5. Sri.Mohsin Salam, petitioner No.1 – husband is also before this Court through video conferencing and he submits that the dispute between himself and respondent No.2 has been settled. He has no claim against respondent No.2. He has received all items belonging to him from respondent No.2.

6. One of the issues that would arise for consideration of this Court is whether the talaq stated to have been pronounced is in compliance with or would it fall within the mischief of Muslim Women (Protection of Rights on Marriage) Act, 2019 (for short, the 'Act').

7. Section 2 (c) of the said Act defines Talaq as under:-

> *"talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and*

irrevocable divorce pronounced by a Muslim husband."

8. In terms of Section 3, the Talaq as defined under Section 2(c) is void and illegal the words Talaq in both the provisions is used in italics.

9. Section 3 is reproduced hereunder for easy reference:

"Talaq to be void and illegal:- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal."

10. Reading of the above extract would indicate that only a triple talaq pronounced instantaneously is void under the said Act. In the present case, first, second and third talaq has been pronounced on 20.01.2020, 21.02.2020 and 24.06.2020 respectively that is in three different thurs. Therefore, the talaqs not being

instantaneous would not come within the mischief of Section 3 or 2(c) of the said Act. As such, I am of the considered opinion that the arrangement and settlement arrived at between the parties is not violative of the aforesaid Act. As such, the settlement is accepted.

11. Respondent No.2 not intending to prosecute the petitioners under the complaint filed by her and wanting to withdraw the allegations made against the petitioners, I am of the considered opinion that the continuation of the criminal proceedings insofar as petitioners are concerned would not be in the interest of justice or the parties .

12. As such, the proceedings in FIR No.0033/2020 dated 29.02.2020 registered by Pulakeshinagar Police Station for the offences punishable under Sections 323, 420, 354, 498A read with Section 34 of IPC, Sections 3 and 4 of the Dowry

Prohibition Act and Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 are quashed.

Sd/-
JUDGE

Prs*