

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2048 OF 2021

1. Mr. Nizam Rehmat Khan

Aged about 31 years

2. Mr. Rehmat Iman Khan,

Aged about 67 years

3. Mrs. Firdos Rehmat Khan

Aged about 60 years

All residing at Room No.12, Shivaji Nagar,

Municipal Chawl No.1, Section 1, D.G.

Mahajani Road, Opp. Fatima High School,

Sewri, Mumbai-400 015

4. Mr. Rafique Hassan Kazi

Aged about 45 years

5. Mrs. Shagufta Rafique Kazi,

Aged about 45 years

Both residing at Room No.1,

Municipal Chawl No.16,

Sewri Cross Road,

Sewri, Mumbai-400 015

6. Mr.Mohammad Hanif Hasan Khan

Aged about 26 years

7. Mrs. Anjum Hanif Khan

Aged about 39 years

Both residing at Chawl No.4,

Room No.11, Sewri Cross Road,

Near Muqqaddas Masjid,

Sewri, Mumbai 400 015.

...Petitioners

vs.

1. The State of Maharashtra

(Through the Senior Inspector of

R.A.K. Marg Police Station, Mumbai.

2. Mrs. Sana Nizam Rehmat Khan,

Residing at Rahat Nagar, Room No.21,

Gate No.6, Sewri Cross Road,
Near Police Beat No.3, Wadala,
Mumbai – 400 031.

...Respondents

Mr. Ajay Tripathi for petitioners.
Mrs. S.D. Shinde, APP for respondent No.1-State.
Ms. Khurshida Khan for respondent No.2.
Mrs. Sana Nizam Rehmat Khan-respondent No.2 present through
V.C.

**CORAM : S. S. SHINDE &
 N. J. JAMADAR, JJ.**

**DATE : 3rd JULY, 2021
 (THROUGH VIDEO CONFERENCE)**

ORAL JUDGMENT (PER N.J. JAMADAR, J.) :

1. Leave to amend. Amendment be carried out forthwith.
2. Rule. Rule is made returnable forthwith and with the consent of the learned counsels of the parties, heard finally at the stage of admission.
3. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 is filed seeking to quash and set aside the proceedings bearing No. PW/299/2021, 13th Court, Boiwada, Dadar, Mumbai arising out of FIR No. 255/2020 registered against the petitioners with R.A.K. Marg Police Station, Mumbai for the offence punishable under section 498-A

read with section 34 of the Indian Penal Code, 1860 ('the Penal Code').

4. The petitioners have been arraigned for the offence punishable under section 498-A read with section 34 of the Penal Code for having subjected the respondent No.2-Mrs.Sana Nizam Rehmat Khan, first informant, to cruelty. The marital dispute also led to institution of a proceeding under the Protection of Women from Domestic Violence Act, 2005.

5. The petitioners have approached the Court with the assertion that, in the intervening period, the matrimonial dispute has been amicably resolved. The marriage between the petitioner No.1 and respondent No.2-the first informant has been dissolved in terms of 'Khula', obtained by the respondent No.2 on 21st April 2021. Hence, the petitioners have prayed for quashing and setting aside the above-referred prosecution.

6. The learned counsels for the petitioners and the respondent No.2 submit that the parties have amicably resolved all the disputes. Consent terms have been filed before the Court of Metropolitan Magistrate, Dadar, Mumbai. A copy of the consent terms is annexed to this petition. The respondent No.2-first informant has also filed an

affidavit before this Court. Paragraph Nos.2 and 5 of the affidavit read as under :

*“2. I say that, the disputes and misunderstandings between me and the petitioners are amicably settled and the same settlement/compromise arrived through the consent term before the Hon’ble 13th Metropolitan Magistrate Court at Boiwada in C.C. No. 53/DV/2020 and in said case, Petitioners and myself filed consent terms dated 26.02.2021. The said consent terms already annexed to the above Petition at ‘19-24’. I rely upon and admit the contents of the said consent terms. I say that in view of said consent terms, myself and Petitioner No.1 agreed to separate from each other wherein I agreed to give “KHULANAMA” to the Petitioner No.1, which I have given by executing the “KHULANAMA” dated 21.04.2021 in accordance with Shariat law and also in furtherance of the said consent terms. Hereto annexed and marked as **Exhibit “A & A1”** is a copy of the “KHULANAMA” and also copy of translation thereof.*

.....

5.I say that I have no objection if the complaint against the present petitioners with the R.A.K. Marg Police Station, Mumbai as F.I.R. bearing No. 255 of 2020, for offences under Section 498A, r/w. 34 of the Indian Penal Code, 1860 and also all the other proceedings arising therefrom are quashed. I say that, I do not want to pursue the said complaint and further proceedings arising out of it as the same shall not serve any purpose to anybody. Hence, it is my desire and also humble request not to proceed and/or pursue with the above FIR and any criminal proceedings arising out of it.”

7. Ms.Sana Khan, respondent No.2-first informant appeared

before the Court through video conference. The respondent No.2 admits the contents of the consent terms as well as the assertions in the affidavit. The respondent No.2 is identified by the learned counsel for respondent No.2. The respondent No.2 submitted that she has decided to settle the matrimonial dispute with the petitioner No.1 out of her own volition. There is no coercion or duress.

8. Evidently, the marital discord between the petitioner No.1 and respondent No.2 was the genesis of the offence. The parties have decided to bury the hatchet. The marriage between the petitioner No.1 and respondent No.2 is dissolved by executing a “Khulanama”. They have parted ways. In the circumstances, continuation of the instant prosecution would serve no fruitful purpose. In view of the settlement between the parties, the possibility of the prosecution ending in conviction is very remote and bleak. On the contrary, continuation of the prosecution would cause a serious prejudice to the parties. Thus, in order to secure the ends of justice and prevent the abuse of the process of the Court, we are persuaded to quash the case bearing No.PW/299/2021, pending on the file of 13th Court, Boiwada, Dadar, Mumbai.

9. Hence, the following order :

ORDER

(i) The petition stands allowed in terms of prayer clause (a).

(ii) The case, bearing No. PW/299/2021, 13th Court, Boiwada, Dadar, Mumbai arising out of FIR No. 255 of 2020 registered against the petitioners with R.A.K. Marg Police Station stands quashed and set aside.

(iii) Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)