

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO. 13 OF 2019**

Manjeet Singh Kalyan Singh Bagga and others ... Applicants

Versus

The State of Maharashtra and others ... Respondents

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Mr. Harjot Singh Alang instructed by Mr. S.K. Bagga for the Applicants.

Mrs. M.H. Mhatre, APP for the State.

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**CORAM :            NITIN JAMDAR AND  
                             N.R. BORKAR, JJ.**

**DATED :            18 AUGUST 2022**

**P.C. :-**

.            The present Application under Section 482 of the Code of Criminal Procedure, 1973 is filed to quash the First Information Report No. 20 of 2015 (hereinafter referred to as “FIR”, for short) dated 6 February 2015 registered at Samarth Police Station, Pune against the Applicants for the offence punishable under Sections 498A, 406, 354, 323, 504 read with Section 34 of the Indian Penal Code, 1860 and Criminal Case No.733 of 2017 pending on the file of Judicial Magistrate First Class, Pune arising out of the said FIR.

2. The aforesaid FIR came to be registered at the instance of Respondent No.2 who has inter-alia alleged that she was subjected to mental and physical cruelty at the hands of her husband and in-laws. The Applicant No.1 is the husband of Respondent No.2 and the Applicant Nos.2 and 3 are her mother-in-law and father-in-law respectively.

3. The learned Counsel for the Applicants submits that parties have resolved the dispute amicably. It is submitted that the Applicant No.1 and the Respondent No.2 thereafter filed a Petition for divorce by mutual consent and in the said Petition for divorce, the Respondent No.2 has specifically agreed that she will appear before this Court and will give her consent to quash the FIR in question. It is submitted that the Family Court, Pune while allowing the Petition for divorce by mutual consent has specifically recorded the said fact in its Judgment and Order dated 10 October 2018.

4. This Court on 27 February 2019 passed the following order :

*“It appears that vide judgment dated 10/10/2018 the Family Court No. 1, Pune dissolved the marriage of complainant/ respondent no. 2 with petitioner no. 1. In the consent terms filed before that court, the complainant has undertaken to withdraw the subject FIR.*

*Hence, issue notice to respondent no. 2 returnable on 29/04/2019. Service through court be effected. If she does not appear, matter shall proceed ex parte. Learned APP waives for respondent no. 1.”*

5. Thereafter, on 26 April 2022 this Court passed the following order :

*“1. Learned counsel for the petitioners submitted that respondent No.2, at whose instance, the FIR being C.R.No. 20 of 2015 registered with Samarth Police Station, Pune, on 6th February, 2015 and the proceedings viz. C.C. No.733 of 2017 pending before the learned JMFC, Court Room No.1, Pune, are sought to be quashed, has consented for withdrawal of the complaint and further given no objection for quashing of the FIR and the proceedings arising therefrom. Learned counsel for the petitioners submitted that in spite of intimation/notice to respondent No.2, respondent No.2 is not attending this Court and the pendency of the proceedings is causing prejudice to the petitioner Nos.2 and 3 who are aged parents of the petitioner No.1.*

*2. Perusal of the office report shows that though notice was issued by this Court, due to paucity of time, the notice was not served upon the respective respondent. Considering these facts, we deem it appropriate to direct the Registry to issue fresh notice to respondent No.2 returnable on 17th June, 2022.*

*3. In the meantime, the learned counsel for the petitioners is also directed to give intimation/*

*notice to respondent No.2 about the next scheduled date. The In-charge Police Station Officer attached to Samarth Police Station, Pune, is also directed to give intimation/notice to respondent No.2 about the next scheduled date.*

*3. If, in spite of due service of notice/intimation, respondent No.2 fails to remain present before this Court personally or through counsel of her choice, the petition would be taken up for hearing on its own merits by taking into consideration the fact that respondent No.2 was a party to the consent terms filed before the Family Court No.1 at Pune.”*

6. The record shows that a fresh notice was, thereafter, issued to the Respondent No.2. However, inspite of service there is no appearance on behalf of the Respondent No.2.

7. We have perused the Affidavit filed by Respondent No.2 in Petition No.F-300 of 2018 before the Family Court at Pune. Paragraph 10 of the said Affidavit reads thus :

*“10. I say that both of us have decided mutually as under that once divorce is granted-*

- a) The Allegations made by each are withdrawn,*
- b) I shall withdraw the case under Sec. 498(A), 406, 323, 405 of IPC filed by me against Petitioner No.2 and in laws,*
- c) I have taken all the Articles,*

*d) I have received all my gold and silver articles and will not claim in future from petitioner No.1,*

*e) I have received my Stridhan and I waive my future maintenance and will not claim any maintenance or alimony from Petitioner No.1,*

*f) any interest in the property, Bank Account, Life Insurance, or stock account held by me are in my custody.*

*I, Petitioner No.2 will not claim, any right over the properties of Petitioner No.1, and will not claim in future.”*

8. The Family Court, Pune while allowing the Petition for divorce by mutual consent has recorded the following findings :

*“9. In the petition Exh.1 and affidavits Exh.10 and 11 it is mentioned that both the parties have agreed and decided to take divorce by mutual consent as per the terms and conditions mentioned in Exh.1. The petitioner nos.1 & 2 have submitted in their respective affidavits that they have complied all the terms and conditions mentioned in Exh.1 except the case of 498-A of I.P.Code. However, the petitioner no.2 has given undertaking at Exh.14 stating that she will get the case u/sec. 498-A of I.P.Code compromised which is pending before the J.M.F.C. Court No.1, Pune. On the basis of petition and affidavits Exh.10 & 11 and after hearing to the petitioners, I am satisfied that the petitioners cannot live together and their consent for divorce is voluntary.”*

9. Considering the overall facts and circumstances and in view of the undertaking of Respondent No.2 to the Family Court, Pune, we have no option except to allow the present Application. Hence, Criminal Application is allowed in terms of prayer clause (a), which reads thus :

*“(a) The impugned F.I.R. dated 06.02.2015 registered vide CR No.20/2015 with Samarth Police Station, Pune for offence u/s. 498(A), 406, 354, 323, 504, 34 of I.P.C. charge-sheet may be quashed and set aside along with all the subsequent proceedings pending before the Learned Judicial Magistrate First Class Court No.1, Pune by C.C. No.733 of 2017.”*

10. The Criminal Application is disposed of.

( N.R. BORKAR, J. )

( NITIN JAMDAR, J. )

KANCHAN  
PRASHANT  
DHURI

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by KANCHAN  
PRASHANT  
DHURI  
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