

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

CRIMINAL APPLICATION NO.207 OF 2018

Tushar Garg And Ors.

... Applicants

Vs.

The State of Maharashtra And Anr.

... Respondents

Mr. Kiran Varma i/b Rajeev Sawant and Associates, for Applicant No.1,

Mr. K. V. Saste, APP for State-Respondent

Mr. Amit Dubey i/b Mr. Ashok Sarogi, for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : 4th April, 2022

P.C. :

1. This Application is filed by the Applicants for quashing of First Information Report registered at CR No.734 of 2017 dated 24.11.2017 at Borivali Police station, Mumbai for the offence punishable under Sections 498-A, 377, 325, 354, 323, 406, 504, 506 read with 34 of Indian Penal Code. Later on charge sheet was filed and it is registered as CC No.4913/PW/2019 pending in the Court of 26th Metropolitan Magistrate Borivali. Initially the Application was filed on merits. During pendency of the Application, the parties have settled their dispute. Applicant No.1 and Respondent No.2 have decided to put

an end to their marital tie.

2. On this background, we have heard Mr. Kiran Varma, learned counsel for Applicant No.1, Mr. K. V. Saste, APP for State-Respondent, Mr. Amit Dubey, learned counsel for Respondent No.2.

3. Applicant No.1 and Respondent No.2 are husband and wife. Their marriage was performed on 30.01.2005 in Renaissance Hotel, Pawai, Mumbai. Respondent No.2 gave birth to two daughters. Kum. Diva born on 01.02.2007 and Kum. Kiara born on 03.05.2014. Respondent No.2 gave birth to daughters only (and not to son) is also one of the areas of difference of opinion/reason for ill-treatment. There are allegations of misbehaviour during honeymoon at Australia, allegations of harassment prior to marriage on account of demand of dowry and Applicant No.1 affair with a lady. There was also an allegation of unnatural intercourse by Applicant No.1 with Respondent No.2. Even there is an allegation of sexual abuse by father in law Applicant No.2. Initially non-cognizable offence No.2983 of 2017 under Sections 323, 504 of IPC was registered. Police tried to convince the Applicant No.1 but there is no change in the behaviour of Applicant No.1. Finally the Respondent No.2 was left with no alternative but to leave the house on 05.10.2017 she went to her parents house and she

was not allowed to take her daughters with her. Finally she lodged the complaint which is registered at Borivali Police Station on 24.11.2017.

4. Applicant No.2 and Applicant No.3 are father-in-law and mother in law, whereas Applicant No.4 and Applicant No.5 are the sister-in-laws. Applicant No.4 and Applicant No.5 were named in the FIR. But it is submitted that chargesheet is not filed against them but it is filed against Applicant No.1 to Applicant No.3 only.

5. It is true that the allegations are serious. But it is result of matrimonial relations. Applicant No.1 and Respondent No.2 have settled their differences. Both have filed Application for divorce by mutual consent before Family Court Mumbai. Photocopy of consent terms filed therein is filed before this Court. Applicant No.1 has agreed to pay Rs.1,75,00,000/- to Respondent No.2 towards permanent alimony. The details of heading of that is mentioned in the consent terms. Applicant No.1 has deposited that in Family Court Mumbai.

6. It has been agreed that Respondent No.2 to withdraw that amount, once decree of divorce is granted. So also Respondent No.2 has agreed to withdraw the case filed under Domestic Violence Act 2005, before the Court of Metropolitan Magistrate, Borivali and also

withdraw all other cases. The details are given in Paragraph No.5 of the consent terms. She has also agreed for giving consent for quashing of FIR.

7. The Respondent No.2 was shown as a partner in M/s Gajanand Muktiram and Company and the amount of permanent alimony also includes, the settlement towards that dues. It is mentioned in Para No.8 of the Application. It is further agreed that the Applicant No.1 will remove his name from 2 Bank Accounts standing in his name and in the name of Respondent No.2. Details are given in Para No.9 of the consent terms. Respondent No.2 has admitted in Para No.14 that she has received all her streedhan articles. The custody of 2 daughters is with Applicant No.1 and access is given to Respondent No.2. (as per clause No.3).

8. In view of above settlement, there is no point in keeping the criminal proceedings pending, when they themselves have decided to separate marital tie, continuance of the criminal proceedings will be hurdle in their future peaceful life. We are inclined to exercise extraordinary jurisdiction under Section 482 of the Cr.P.C. Hence the Order:-

ORDER

- A) Application No.207 of 2018 is allowed.
- B) The charge-sheet pending in the Court of 26th Metropolitan Magistrate Borivali CC No.4913/PW/2019 arising out of FIR No.734 of 2017 registered at Borivali Police Station, Mumbai for the offences punishable under Sections 498-A, 377, 325, 354, 323, 406, 504, 506 read with 34 of the IPC is quashed and set aside.
- C) No separate order is passed in respect of Applicant Nos.4 and 5 as no charge sheet is filed against them.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)