

SHUBHADA
SHANKAR
KADAM

Digitally signed by
SHUBHADA
SHANKAR KADAM
Date: 2022.02.03
17:23:48 +0530

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

WRIT PETITION NO.2843 OF 2014

Nizampasha Bapusaheb Patil and ors.Petitioners
versus
The State of Maharashtra and anr.Respondents

with

WRIT PETITION NO.2919 OF 2013

Smt. Ishrat Ikhlas Patel and ors.Petitioners
versus
Sub-Inspector of Police and ors.Respondents

None for the petitioners in writ petition No.2843 of 2014.

Mr. A. N. Mulla, advocate for the petitioner in criminal writ petition
No.2919 of 2013.

Mr. M. V. Thorat i/b. Mr. Akshay Petkar, advocate for respondent No.3 in
writ petition No.2919 of 2013 and for respondent No.2 in writ petition
No.2843 of 2014.

Ms. Nilofar Patil, respondent No.2 in writ petition No.2843 of 2014
present.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : 1st FEBRUARY, 2022.

P.C. :

1. By these writ petitions, the petitioners viz. Nizampasha Bapusaheb Patil, Rabiya Nizampasha Patil and Mohd.Hussain Nizampasha Patil in writ petition No.2843 of 2014 and petitioners viz. Smt. Ishrat Ikhlas Patel, Smt. Rafat Riyaz Sarkazi and Smt. Masrat Irshad Bukhari in writ petition No.2919 of 2013, pray for quashment of FIR

bearing CR No.126 of 2013 registered with Vijaypur Naka Police Station, Solapur City on 1st May, 2013 for offences punishable under Section 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860. The said report/FIR is lodged at the instance of respondent No.2 – Nilofar @ Farheen Mohd.Hussain Patil in writ petition No.2843 of 2014 and the very informant/complainant viz. Nilofar is respondent No.3 in writ petition No.2919 of 2013.

2. During the pendency of the petitions, respondent No.2 submitted her consent for quashing the report/FIR and the proceedings arising out of the said FIR viz. RCC No.880 of 2013 pending before 4th Jt. C.J.J.D and JMFC, Solapur as well as certain other parallel proceedings viz. criminal miscellaneous application No.677 of 2013 under Section 12 of the Domestic Violence Act, 2005 before the Jt.C.J.J.D and J.M.F.C., Solapur and PWDVA Appeal No.56 of 2019 pending before the District Judge -3 and Addl. Session Judge, Solapur. There is also a reference of other parallel proceedings in the document under the caption “Joint Affidavit and Consent Terms” dated 29th January, 2022. The same is taken on record and marked “X”. Perusal of the said document further shows that the respondent – Nilofar alian Farheen Mohd.Hussain Patil and Mohd. Hussain Nizampash Patil – petitioner (husband) have amicably and mutually agreed to settle the dispute on certain terms and conditions. The parties have decided to part ways and in paragraph 3 of

the consent terms they have stated as under:

“3. We do hereby further agree that Smt. Nilofar alian Farheen Mohd.Hussain Patil – the Respondent No.2 (Wife) hereby asking for divorce in form of Khula and the same is agreed to upon by her husband i.e. Mohd. Hussain Nizampasha Patil – petitioner No.3 herein. Therefore, their matrimonial ties get separated and marriage stands dissolved. Khula formalities will also be performed before the Kazi at Solapur as proposed by Respondent No.2 and Petitioner No.3 agrees to be present. Thus, both are absolved of each others any future liability and will have no right, claim over each other’s persons and properties.”

In paragraph 6 of the consent terms, there is a reference of the sum agreed between the parties by way of maintenance. The total sum agreed to be paid is Rs.47,10,000/- (Rupees Forty Seven Lakh Ten Thousand Only). Out of the said sum, a sum of Rs.15,10,000/- (Rupees Fifteen Lakh Ten Thousand Only) is already paid to respondent No.2- Smt. Nilofar alias Farheen Mohd. Hussain Patil by way of maintenance and the husband has agreed to pay balance amount of Rs.32,00,000/- (Rupees Thirty-Two Lakh Only) by way of Demand Draft No.001123 dated 25th January, 2022, drawn on Axis Bank Ltd. In favour of account holder - Nilofar alian Farheen Mohd.Hussain Patil in her S.B.A/c.No.0952010227018 as a provision towards reasonable and fair

maintenance for life to wife – Nilofar and minor son-Asad Ahmed Mohammad Hussain Patil.

In paragraph 7 of the said consent terms, it is stated that the said demand draft will be handed over to Mr. Madhav V. Thorat, learned counsel for respondent- Nilofar at the time of filing consent terms in this Court. It is submitted by Mr. Mulla, learned counsel for the petitioners that the said demand draft is already forwarded to Mr. Madhav V. Thorat, learned counsel through his Associate.

3. The parties are present before this Court by virtual mode of hearing. Respondent No.2 – Nilofer alias Farheen Mohd. Hussain Patil is also present before this Court by virtual mode. On query being put to her, she submitted that the consent terms are agreed upon by her and, she has no objection for quashing the FIR and the proceedings arising out of the said FIR.

4. At the cost of repetition, we may state that the couple viz. husband and wife have decided to part their ways and this separation is agreed by the parties on certain terms. These terms are duly followed by the parties.

5. 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 opinion that no fruitful purpose would be served by keeping the FIR and the proceedings arising out of the FIR pending except burdening the Criminal Courts which are already overburdened.

6. Considering all these facts, we are of the opinion that the petitioners have made out a case for allowing the petitions and accordingly the petitions are allowed. In that view of the matter and in the interests of justice, the FIR No.126 of 2013 registered with Vijaypur Naka Police Station, Solapur City on 1st May, 2013 for offences punishable under Section 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, as well as the proceedings arising out of the said FIR are quashed and set-aside. The writ petitions, accordingly, stands disposed of.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)