

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

WRIT PETITION NO.2346 OF 2023

Mr. Krishna Ishwarappa Midodi Poojari & Ors. ...Petitioners

Versus

The State of Maharashtra & Anr. ...Respondents

Ms Heena Siddiquee a/w. Adv. Pratibha Bangera for the Petitioners.

Mr. S. V. Gavand, APP for Respondent-State.

Mr. Devang Parmar for the Respondent No.2

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ**

DATED : 25th OCTOBER, 2023

P.C.:

1. Mentioned out turn.
2. The Petitioner No. 1 was married to the Respondent No. 2/Complainant on 24/05/2006. The couple is blessed with a son - Daksh, who is in the custody of the Respondent No. 2/Complainant and is studying in 10th standard.
3. Alleging ill-treatment, a complaint came to be lodged resulting into registration of the offence being C. R. No. 55/2013 punishable u/s. 406, 418, 420, 498-A, 504, 506(2) r/w. 34 of IPC.
4. **After investigation charge-sheet came to be submitted against the Petitioner No. 1-husband, the Petitioner No. 2-Sister-in-Law and the Petitioner No. 3-**

husband of the Petitioner No. 2.

5. After the intervention of the Metropolitan Magistrate, the parties have decided to settle their differences and accordingly consent terms were placed on record on the file of the Metropolitan Magistrate, 26th Court, Borivali, Mumbai in the proceedings being PW/1705/2013.

6. The said Consent Terms are duly signed and executed by all the Petitioners and the Respondent No. 2/Complainant.

7. Under the orders of the Court, the Petitioner No. 1-husband was directed to pay Rs.25,000/- of maintenance as was claimed by the Respondent No. 2-wife. In view of settlement arrived at, the wife has forgone the entire claim for maintenance for the son as she has undertaken to maintain the son - Daksh on her own. She has given up aforesaid claim for maintenance as her condition that she is the sole custodian of the son-Daksh has been consented and accepted by the Petitioner No. 1-husband. The paragraph 2 of the Consent Terms is worth referring to:

"2. Krishna has agreed to give up all his rights and claims of custody, access of their Son Daksha in favour of Deepa and undertakes to Hon'ble Court not to claim any past, present or future rights or claim in that regard even under change of circumstances. Deepa has agreed to wave Rs.25,000/- per month towards the claim of minor son Daksh payable per month (as per decree of Family Court)

agreed that Deepa being sole guardian/custodian of their son Daksha alone can take all the decisions for Daksh. Further agreed to have the effect of Deepa being sole custody and guardian of Daksh in the decree dated 05-08-2019 passed by Family Court No. 3 Bandra agreed that all claim, disputes, regarding access pending between them stands revoked."

8. Apart from above, in paragraph 4 of the Consent Terms, the Respondent No. 2/Complainant has given up all her rights and claims in the property more particularly described therein as against the receipt of payment of Rs.95,00,000/- by the Respondent No. 2 and has accordingly executed and registered a relinquishment deed in favour of the Petitioner No. 1.

9. In response to the Court's intervention, the son-Daksh was interviewed by us in chamber.

10. In compliance of the orders of this Court dated 14/09/2023 and 27/09/2023, the Petitioner No. 1-husband has placed on record an Affidavit thereby undertaking that he shall be depositing an amount of Rs.10,00,000/- towards the welfare of his child. The aforesaid statement is made in response to the Court's query.

11. However, at this stage the request of the Petitioner No. 1-husband to permit access is denied and refused by the Respondent No. 2/Complainant stating that she does not want any assistance of Rs.10,00,000/- as has been suggested by this Court

and accepted by the Petitioner No. 1. As such, the said issue of deposit of Rs.10,00,000/- by the Petitioner No. 1 is given up as has been claimed by the Respondent No. 2/Complainant.

12. In the backdrop of the aforesaid development viz. Consent Terms and the Consent Affidavit placed by the Respondent No. 2 on record, we have asked Mr. Gavand, learned APP to verify from the Respondent No. 2 as to whether she is voluntarily extending consent for quashing. After having verified her consent which was informed to be free from coercion and out of her free will, we deem it appropriate to allow the present proceeding in terms of prayer clause (a) particularly having regard to what has been stated in the Consent Affidavit and also in the Content Terms referred above.

13. The Writ Petition stands disposed of accordingly.

(N. R. BORKAR, J)

(NITIN W. SAMBRE, J.)