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

CRIMINAL APPLICATION NO.1030 OF 2021

1. Mr. Samir Shashikant Sabnis .. Applicant

Vs.

1. The State of Maharashtra

2. Mrs. Yesha Samir Sabnis .. Respondents

.....
Mr. Sandeep Kadam for the applicant

Mrs. P.P. Shinde, APP for the respondent – State

Mr. Ravi Ukey for the respondent no.2

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 2nd FEBRUARY, 2023.

P.C.

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the application is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent no.1 – State and learned Counsel Mr. Ukey waives notice on behalf of the

respondent No.2.

3. By this application, preferred under Section 482 of the Code of Criminal Procedure, the applicant seeks quashing and setting aside of the FIR registered vide C.R. No. 64 of 2019 with the Andheri Police Station, Mumbai for the offences punishable under Sections 498A, 406, 377, 504 and 506 of the Indian Penal Code and consequently, the proceeding pending before the 65th Metropolitan Magistrate Court at Andheri, Mumbai, being Case No. 1874/PW/2019. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. Perused the papers. The applicant is the husband of respondent no.2. The applicant and the respondent no.2 got married on 12.02.2008 at Jamnagar, Gujarat as per Hindu rituals. After the marriage, the applicant and the respondent no.2 started residing at Andheri, Mumbai and last resided together till 01.09.2014. Thereafter, the respondent no.2 has been residing with her parents at Kandivali, Mumbai. From the said wedlock, the applicant and the respondent no.2 have a child, who is presently aged 8 years. As according to the respondent no.2, she was

allegedly ill-treated and harassed by the applicant, she lodged the aforesaid FIR as against the applicant alleging the aforesaid offences. After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned 65th Metropolitan Magistrate Court at Andheri, Mumbai.

5. In the interregnum, during the pendency of the aforesaid proceeding, the parties amicably settled their dispute and decided to put a quietus to the same. Accordingly, consent terms were entered into by and between the parties in the Family Court at Bandra, Mumbai in Petition No. A-1160 of 2017. The said petition so filed in the Family Court was converted into a petition seeking divorce by mutual consent under Section 13-B of the Hindu Marriage Act. Certain terms and conditions have been spelt out in the consent terms, which both parties have undertaken to comply. As far as the custody of the child is concerned, it is to be remain with the respondent no.2.

6. It appears from the consent terms that the respondent no.2 has not taken any monies from the applicant for herself or the child. On the last date, having perused the consent terms, we were of the

opinion that the consent terms did not taken into consideration the welfare and well-being of the child i.e. the child of the applicant and the respondent no.2. Since no provision was made with regard to the child's education and that the child's interest was not protected, we expressed our dis-satisfaction to the learned Counsel for the parties.

7. Today, pursuant thereto, learned Counsel for the applicant has tendered an affidavit-cum-undertaking of the applicant, dated 02.02.2023. The said affidavit is duly notarized before the Notary. In the said affidavit-cum-undertaking, the applicant has given an undertaking that he will pay/deposit the entire school and college tuition fees regularly i.e. yearly fees, in two installments one installment, as directed by the School / College authority. The said affidavit is taken on record.

8. The applicant is present in person. He reiterates what is stated by him in the affidavit-cum-undertaking. He states that the entire school as well as college fees of the child will be deposited by him, as directed by the school / college authorities.

9. Learned Counsel for the respondent no.2 has tendered an

affidavit of the respondent no.2 dated 02.09.2023, duly notarized before the Notary, which is at Exh. 'C' at page 25 of the application. The said affidavit is taken on record. In the said affidavit, the respondent no.2 has stated that she has amicably settled the dispute with the applicant and that she does not wish to prosecute the applicant further and as such, she has no objection to the quashing of the case against the applicant.

10. The respondent no.2 is present in person. On being questioned, she reiterates the contents of her affidavit. To the said affidavit is annexed a photostat copy of the Aadhar card of the respondent no.2 duly attested by her. The same is taken on record. Learned Counsel appearing for the respondent No.2 has identified the respondent no.2 and the learned A.P.P has verified the original Aadhar Card of the respondent no.2.

11. Considering the nature of dispute, the consent terms entered into between the parties and in particular, the affidavit-cum-undertaking tendered by the applicant to pay School and College tuition fees of the child till the completion of his graduation, and the judgments of the Apex Court in the case of **Gian Singh Vs. State**

of Punjab & Anr.¹ and Narinder Singh & Ors. Vs. State of Punjab & Anr.², there is no impediment in allowing the application.

12. Accordingly, the application is allowed and C.R. No. 64 of 2019 registered with the Andheri Police Station, Mumbai and consequently, the proceeding pending before the 65th Metropolitan Magistrate Court at Andheri, Mumbai, being Case No. 1874/PW/2019 are quashed and set aside.

13. We make it clear that quashing is subject to the applicant abiding by the affidavit-cum-undertaking tendered by him today in Court.

14. Rule is made absolute in the aforesaid terms.

15. Application is disposed of.

16. Liberty is granted to the respondent no.2 to apply in the event, the undertaking so given by the applicant, is not complied / is breached.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

17. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]