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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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by VASANT
ANANDRAO
IDHOL
Date: 2023.10.30
18:31:50 +0530

CRIMINAL WRIT PETITION NO.4816 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO.19889 OF 2023

Ankit R. Upadhyaya & Ors. ...Petitioners
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr.Digajmaan Mishra with Mr.Yashmaan Mishra i/b Brahmnanand Lexis
LLP for the Petitioners.

Ms.Sweta Yadav i/b Ms.Sayali Wani for Respondent No.2.

Mr.Ankit Upadhyay – Petitioner present on V.C.

Ms.Gargi Pathak – Respondent No.2 present on V.C.

Ms.M.R. Tidke, APP for the State – Respondent.

CORAM : RAJESH S. PATIL, J.
DATE : 26TH OCTOBER, 2023.

P.C. :-

1. The Petitioners seek quashing of D.V. Complaint No.28 of
2022 registered with J.M.F.C. Third Court, Kalyan.

2. By an order dated 5 January 2023 passed in this Petition,
this Court issued notice only as regards Petitioner Nos.2 to 8 (who
are in-laws of Respondent No.2 (original complainant). As far as the

Petition filed by Petitioner No.1 (husband), the same was termed as dismissed. *Ad-interim* relief in terms prayer clause (b) of the Petition was granted only as against Petitioner Nos.2 to 8.

3. Thereafter by an order dated 17 October 2023, this Court recorded that Petitioner No.1 (husband) and Respondent No.2 (wife), has settled the dispute and by consent sought to quash and set aside the D.V. Complaint . However, since the earlier order passed in this Writ Petition on 5 January 2023 recorded that the Petition is dismissed as against Petitioner No.1, permission was granted to file appropriate application to seek recall of the order dated 5 January 2023, only for the purpose of restoration of the Writ Petition as far as Petitioner No.1 was concerned.

4. Petitioner No.1 has now filed Interim Application (Stamp) No.19889 of 2023. The said Interim Application is seeking prayer that the order dated 5 January 2023 be recalled to the extent that the Petition against Petitioner No.1 be restored back to the file of this Court. So also Interim Application is seeking that the Petition be decided after restoration, pursuant to the consent affidavit of Petitioner No.1 (husband) and Respondent No.2 (wife).

5. In the Interim Application, it has been stated by the parties that Petitioner No.1 (husband) and Respondent No.2 (wife) have settled their dispute amicably and have no objection if the present Writ Petition is allowed and the proceedings in D.V. Act are quashed and set aside. It is further stated that on 17 October 2023, Petitioner No.1 (husband) and Respondent No.2 (wife) were personally present in this Court, however, the matter could not be taken up for hearing. To the Interim Application, the consent affidavit of Petitioner No.1 (husband) dated 17 October 2023 and the consent affidavit of Respondent No.2 (wife) dated 17 October 2023 are annexed.

6. For ease of reference, the consent affidavit of Petitioner No.1 (husband) and Respondent No.2 (wife) are reproduced hereinbelow :

Exh. B 10

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Jurisdiction
Criminal Writ Petition 4816 of 2022

Ankit son of Ramkripal Upadhyaya & Ors. ...Petitioners
 Versus
 State of Maharashtra & Another ...Respondents

Affidavit of Petitioner No. 1 (Husband) consenting in quashing the petition filed by the all the Petitioners: -

I, Shri Ankit son of Ramkripal Upadhyaya, aged about 34 years, adult Indian Inhabitant, having present / permanent residence at 002, Gajanan Sai Apt., Next to Gajanan Temple, Sankhe Colony, Palghar 401404, the Petitioner above-named, do hereby on solemn affirmation, state, confirm and declare as under:-

1) That I had been arrayed as Accused / Respondent No. 1, in two complaints (FIR / DV) which are challenged by me and other Petitioners (my immediate family members) in the above Petition, descriptively mentioned as follows:

a. **FIR No. 0519 of 2022 dated 02.07.2022 of Manpada Police Station which got converted into R.C.C. No. 73 of 2023 &**
 b. **PWDVA Application No. 28 of 2022.**

Both the matters filed are a part of Complaint filed by Respondent No. 2 (my wife Complainant) as aforementioned and are pending




before same Court, i.e., Hon'ble 3rd Jt. C.J.J.D. & J.M.F.C.
Kalyan Court, at Thane.

2) I say that the above matters were filed out of the matrimonial
disputes and incompatibility between me and Respondent No.

2.

3) I further state that:-

a. Now we have settled the disputes and also filed a
conversion petition before the Hon'ble Family Court
Thane in pending **Divorce Petition A - 550 of 2021**. That
a "Consent Terms" is also filed in **Divorce Petition A -
550 of 2021**, which is a part of record for reference of
this Hon'ble Court (*a copy / copies whereof, is / are
annexed hereto and marked as Annexure / Exhibit -
"A"*).



4) I say that the said Divorce petition is only pending for Claim
Affidavit as also that the In-charge Court is vacant till first
week of December 2023. I do not wish to keep the Divorce
Decree pending for any compliance and would like to press for
a final order and decree, as I might have to travel for work
related purposes.

5) I shall also pray that an order may also be passed directing to
the Family Court, Thane in-charge to proceed with the matter
expeditiously as I wish to travel for work to other state.

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6) I further say that I shall pray this Hon'ble Court to quash the above-mentioned Petition/s and pass order in favour of all the Petitioners and I have expressed consent of all the Petitioners for the quashing / closure of above complaints filed by Respondent No. 2.

7) Whatever is stated hereinabove is based upon the discussion with my Advocate Digajmaan Mishra, for Petitioners and the above content is drafted as per our settled terms and I have read and understood the same and I have filed the above consent terms without any fear or favour, affection or ill-will against any person/s.

Whatsoever stated hereinabove is true and correct to the best of my knowledge and belief.

Solemnly Affirmed this Tuesday, 17 October 2023

Identified by me

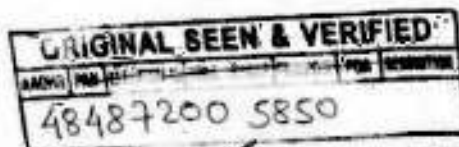
17 OCT-2023



Yashmaan Mishra / Sweta Yadav / Digajmaan Mishra

For Advocate for Petitioners

Petitioner No. 1



BEFORE ME

SHANE CARDOZ
Advocate & Notary (Govt. of India)
Reg. No. 16325 B. Card. LL. B
G3, Clifford House, Kurla West, Mumbai 400 090
Next to Ganesh Mandir Chowk, Bandra (W)
Mumbai - 400 050, Mob. 98205 17090
E-mail: shane@cardoz.com

Notary Registrar Serial No.	4153/A/23
Date:	17 OCT 2023



ANNEXURE A

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The articles / goods / items / furniture / clothes, etc. are returned by Petitioner husband or his parents, as per mutual consent are as under:

Schedule I

**ITEMS TO BE DELIVERED BY PETITIONER / HIS
PARENTS TO DOMBIVALI HOUSE ADDRESS OF
RESPONDENT ON 08.10.2023**

ITEMS OF AIROLI FLAT

- | Sr. | Item |
|------------|---------------------------------|
| 1. | LPG Gas stove |
| 2. | LPG Cylinder |
| 3. | Washing Machine |
| 4. | Refrigerator |
| 5. | Iron Bed (Folding old) |
| 6. | Trunk |
| 7. | Wooden Small Tables X 2 numbers |
| 8. | Shoe Rack |
| 9. | Kitchen Utensils |
| 10. | Electric Iron |
| 11. | Curtains |

**ITEMS OF PALGHAR HOME**

1. Clothes
2. Large Brass Plates X 2 numbers
3. Kalash
4. Small Plate
5. Wooden sitting Plank
6. Katori

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Schedule II
ITEMS TO BE HANDED OVER IN COURT

Silver Items:

1. Plate
2. Paan X 5 Numbers
3. Supari X 5 Numbers
4. Nariyal
5. Fish



Schedule III

Gold item:

1. A Gold Chain given to Petitioner as gift (which is pawned with goldsmith) to be returned as early as and latest by 31st January 2024.
2. A Gold Ring – given by Respondent is also agreed to be returned by the Petitioner to the Respondent on or before 31st January 2024. In the alternative, if the same ring is not available, an equivalent amount in rupees as per the original Bill is to be returned by the Petitioner to the Respondent.

GENERAL TERMS OF EXCHANGE

1. The Respondent, after receipt of the above article of Schedule I, shall tick against each item of in the list thereof and handover the List and / or whatsapp the same to Petitioner / his mother / his lawyer, confirming receipt of the articles at her doorsteps on 08.10.2023.
2. Items of **Schedule II** to be handed over by Petitioner to Respondent in Court.
3. The parties have agreed that they shall not keep the Divorce pending for compliance of Item of **Schedule III** and shall agree for conversion of present petition to mutual consent petition for Divorce and get decreed the same.
4. After consent terms are filed and gifts exchanged, breach of conditions only for articles / items of **Schedule III** shall amount to contempt of the above terms against Petitioner.

Petitioner

Respondent

Adv for Petitioner

Date: 10/10/2023

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 **भारत सरकार**
GOVERNMENT OF INDIA

 **अंकित रामकृष्ण उपाध्याय**
Ankit Ramkrishna Upadhyaya

जन्म वर्ष / Year of Birth : 1999
पुरुष / Male

4848 7250 5650

आधार — सामान्य माणसाचा अधिकार

Ankit-4

15/11/2019
D.G. Mishra
Adv. for Keth'Home

 **भारतीय चिकित्सा आरोग्य प्राधिकरण**
AYUSH IDENTIFICATION AUTHORITY OF INDIA

पता : ००२, गजानन साई अपार्टमेंट,
ऑफ आर्यन स्कूल रोड, अलखनंदा
सोसायटी बंगलूर, पालघर पश्चिम,
पालघर, ठाणे, महाराष्ट्र, ४०१४०४

Address: 002, Gajanan Sai Apt.,
Off Aryan School Road, Near
Alakhnanda Soc., Palghar West,
Palghar, Thane, Maharashtra,
401404

 1947
1947 194 1947

 help@ayush.gov.in

 www.ayush.gov.in

 PIN, New No. 1947,
Bengaluru-560 001

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ADVOCATE



**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

Criminal Appellate Jurisdiction

Cri. Writ Petition 4816 of 2023

Ankit Upadhyaya & Ors. ...*Petitioners*

Versus

State of Maharashtra & Anr ...*Respondents*

Consent-Affidavit of Petitioner No. 1

allowing quashing of present Petition

Tuesday, 17 October 2023

17 OCT 2023



Brahmand Lexis LLP

Advocate for Petitioners

9, B-1, Gundecha Chambers,

N. M. Road, Kala Ghoda, Mumbai 400001

Mobile No. 98700 300 75 / 72 / 74

BCMG Enrolment No. MAH / LF-470 / 2023

Email: brahmandlexisllp@gmail.com

Adv. Code – I 2244

Exh. C **16**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Jurisdiction
Criminal Writ Petition 4816 of 2022
Ankit son of Ramkripal Upadhyaya & Ors. **...Petitioners**
Versus
State of Maharashtra & Another **...Respondents**

Affidavit of Respondent No. 2 (Original Complainant Wife)
consenting in quashing the petition filed by the Petitioners:-

I, Ms. Gargi daughter of Chandrakant Pathak (wife of Ankit Upadhyaya), aged about 34 years, adult Indian Inhabitant, having present / permanent residence at 304, A Wing, Lodha Freshia, Lodha Heaven, Nile Gaon, Pallava, Dombivali East, Thane 421204, the Respondent No. 2 (Original Complainant) above-named, do hereby on solemn affirmation, state, confirm and declare as under:-

1) That I had been arrayed as Respondent No. 2 (being wife of Petitioner No. 1) in the above Petition as:

a. I had filed an **FIR No. 0519 of 2022 dated 02.07.2022** of Manpada Police Station which got converted into **R.C.C. No. 73 of 2023 &**

b. I had filed a **PWDVA Application No. 28 of 2022.**

Both the matters filed by me as aforementioned are pending before **Hon'ble 3rd Jt. C.J.J.D. & J.M.E.C Kalyan Court, at Thane.**



17
2) I say that the above matters were filed out of the matrimonial disputes and incompatibility between me (Respondent No. 2) and Petitioner No. 1 herein.

3) I further state that:-

a. Now I have settled the disputes between me and the Petitioner No. 1. I have also filed a conversion petition before the Hon'ble Family Court Thane in pending **Divorce Petition A - 550 of 2021**. That a "**Consent Terms**" is also filed in **Divorce Petition A - 550 of 2021**, which is a part of record for reference of this Hon'ble Court (a copy / copies whereof, is / are annexed hereto and marked as **Annexure / Exhibit - "A"**).



4) I say that the said Divorce petition is only pending for Claim Affidavit as also that the In-charge Court is vacant till first week of December 2023. I do not wish to keep the Divorce Decree pending for any compliance and would like to press for a final order and decree, as I might have to travel for work related purposes.

5) I shall also pray that an order may also be passed to the Family Court, Thane in-charge to proceed with the matter expeditiously as I wish to travel for work to other state.

6) I further say that I shall pray this Hon'ble Court to quash the above-mentioned Petition/s and pass order in favour of the

18

Petitioners and I do not wish to proceed against any person / persons and would like to move on in life.

7) Whatever is stated hereinabove is based upon the discussion with Advocate Digajmaan Mishra, for Petitioners and the above content is drafted as per our settled terms and I have read and understood the same and I have filed the above consent terms without any fear or favour, affection or ill-will against any person/s.

8) I pray that the above petition be allowed in favour of the Petitioner and disposed of pursuant to the present Consent Terms between me as Original Complainant / Respondent No. 2 (wife) and Petitioner No. 1 (Husband).

Whatsoever stated hereinabove is true and correct to the best of my knowledge and belief.

17 OCT 2023

Solemnly Affirmed this Tuesday, 17 October 2023

Identified by me

Sureka

For Advocate for Respondent No. 2

Respondent No. 2

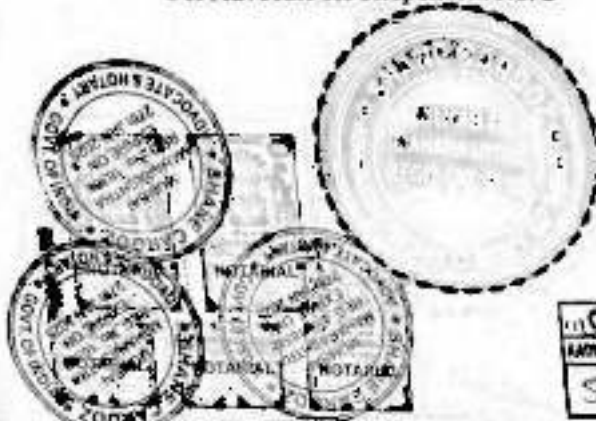
BEFORE ME

SHANE CARDOZ

Apudata & Notary (Gent of India)
Reg. No. 10304 & Comp. LL &
G3, Clifford House, Karamnagar, Mandir Road
Near to Ganesha Mandir Chowk, Bandra (W)
Mumbai - 400 050. Mob. 98206 17099
Email: 13437 / 2002

Notary/Registrar
Serial No. 4155/A/23
Date: 17 OCT 2023

ORIGINAL SEEN & VERIFIED
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ANNEXURE A

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ITEMS OF PALGHAR HOME

- | | |
|----|--------------------------------|
| 1. | Clothes |
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GENERAL TERMS OF EXCHANGE

1. The Respondent, after receipt of the above article of Schedule I, shall tick against each item of in the list thereof and handover the List and / or whatsapp the same to Petitioner / his mother / his lawyer, confirming receipt of the articles at her doorsteps on 08.10.2023.
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Petitioner

Respondent

Adv for Petitioner

Date:10/10/2023

21


सर्वोच्च न्यायालय
Supreme Court of India


Gargi Chandrakant Patil
DOB: 22/09/1990
Female




5020 7915 9290

मेरा आधार, मेरी पहचान

Patil


सर्वोच्च न्यायालय
Supreme Court of India

Address: 30-A Laxmi Vasthaya City Rd,
Laxmi Nagar near High School, Gurgaon,
Haryana 122001, India.
Telephone: 471334



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TRUE COPY

Patil

ADVOCATE



7. Mr.Mishra, Advocate for the Petitioners is attending this hearing online . Mr.Mishra states that his client - Petitioner No.1 (husband) is also attending this hearing online.

8. Ms.Yadav holding for Advocate Ms.Wani for Respondent No.2 states that her client - Respondent No.2 (wife) is also present online during the hearing of the proceedings.

9. Both the counsel identified the signatures of their respective clients on the consent affidavits. Both the counsel also submitted that they have explained the contents of the consent affidavits, to their respective clients.

10. Heard both the counsel. I have gone through the Interim Application. I am satisfied that case is made out to allow Interim Application (Stamp) No.19889 of 2023.

11. The Interim Application is allowed in terms of prayer clauses (a) and (b).

12. Therefore, case is made out to allow this Writ Petition. The Writ Petition is allowed in terms of prayer clause (a). Prayer clause (a) of the Writ Petition reads as under :-

“(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus / certiorari or a writ in the nature of Mandamus / certiorari or any other appropriate writ, direction or order to Respondent No.1 JMFC Court, Kalyan Appln 28 of 2022 & after going into

the legality, validity and propriety of the impugned action of the Respondent no.2, this Hon'ble Court be pleased to quash and set aside the impugned D.V. Complaint."

11. There shall be no order as to costs.

(RAJESH S. PATIL, J.)