

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

WRIT PETITION NO. 2816 OF 2023

Nikhil Anil Rasam

..Petitioner

v/s.

The State of Maharashtra .

..Respondents

Mr. Afsar Ansari i/b. Mr. T.R.Patel for the Petitioner.

Ms. Sonal Parab i/b. Rajeev Sawant & Associates for the
Respondent No.2.

Ms. Rutuja Ambekar, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, &
N. R. BORKAR, JJ.**

DATED : 10th JANUARY, 2024.

P.C.

1. This is a petition under Article 226 of the Constitution of India, to quash Crime No. 144 of 2023, registered at Borivali Police Station, for offences punishable under Section 498A, 506 of the Indian Penal Code, and Criminal Case No.2602157/PW/2023, pending on the file of the Metropolitan Magistrate, 26th Court, Borivali, Mumbai.

2. The aforesaid crime was registered pursuant to the FIR lodged by the respondent no.2. The marriage of the petitioner and the respondent no.2 was solemnized on 18.02.2013. They have a child

from the said marriage. The respondent no.2 lodged the FIR on 02.03.2023 alleging that the petitioner had subjected her to physical and mental cruelty. Based on the allegations made in the FIR, the aforesaid crime came to be registered, and upon investigation of the said crime, chargesheet came to be filed before the Metropolitan Magistrate, 26th Court, Borivali, Mumbai.

3. Learned Counsel for the petitioner and the respondent No.2 state that both the parties have settled the dispute amicably. They have placed on record the consent terms, which read thus:

- 1) The parties to the present Consent Terms are the same parties as referred in the Cause title mentioned above. The Petitioner and the Respondent no. 2 are Husband and Wife having married on 18/02/2013 in Mumbai. The Petitioner and Respondent no. 2 are Hindus by religion and are therefore governed by the provisions of Hindu Marriage Act, 1955.*
- 2) The parties herein state that following proceedings are pending against each other:*
 - a) The Respondent no. 2 has filed an FIR No. 144 of 2023 against the Petitioner for offences punishable u/sec 498-A and 506 of Indian Penal Code and the present petition filed by the Petitioner before this Hon'ble Court is under Article 226 of the Constitution for seeking quashing of the aforesaid FIR No. 144 of 2023. It is further stated that, upon*

completion of investigation the Respondent No.1 has filed charge-sheet bearing CC no. PW/2157/2023 pending before the Ld. Metropolitan Magistrate 26th Court, at Borivali, Mumbai in connection with FIR No. 144 of 2023.

b) Respondent No. 2 has filed a Petition no. 2283 of 2023 before the Hon`ble Family Court at Bandra seeking divorce and custody of the minor child Aarish. The said proceedings are pending.

c) The Petitioner has filed proceedings being CC no. SW/127/2023, against the Respondent no. 2 before the Ld. Metropolitan Magistrate 65th Court, Andheri for wherein the Ld. Magistrate by Order dt. 05/09/2023 was pleased to issue process against the Respondent No. 2.

d) The Petitioner's mother namely Anita Anil Rasam has filed an Application No. DV/169/2023 u/sec 12 of the Protection of Women from Domestic Violence Act, 2005 against the Respondent no. 2 before the Ld. Metropolitan Magistrate, 22nd Court, Andheri, Mumbai and the same is pending adjudication.

3) The parties state that owing to the intervention of family and friends and more particularly considering the future prospects and welfare of the minor child Aarish, the parties herein have arrived at an amicable settlement on mutually agreed terms. That the Petitioner and the Respondent No. 2 have decided to withdraw all the proceedings filed against each other including the proceedings filed by the mother of the Petitioner on mutually agreed terms and are

desirous to record the same herein as under:

I) DIVORCE AND ALIMONY

- a) The Petitioner and the Respondent No.2 hereby agree and undertake to convert the pending Divorce proceedings under section 13(B) of The Hindu Marriage Act, 1955 seeking dissolution of marriage dt. 18/02/2013 by mutual consent of the petition no. A/2283/ 2023 pending before Hon'ble Family Court, Bandra, Mumbai., within a period of 1 week from signing of the present consent terms.*
- b) That the Petitioner and Respondent No. 2 states that, they have affixed signatures on the conversion petition to be filed before the Hon'ble Family Court. A copy thereof is annexed herewith for records. The Petitioner and the Respondent No. 2 states and undertakes that in the event for any reason, any of the parties fail to remain present before the Hon'ble Family Court the original copy shall be filed before the Family Court and neither of the parties shall deny or resile from the decision of consenting to the dissolution of marriage as per these Consent Term.*
- c) The Respondent No. 2 hereby agrees and undertakes not to claim any alimony from the Petitioner now and during her entire lifetime. Furthermore, the Respondent no. 2 also undertakes not to claim any right in the property of the Petitioner or his ancestors now or during his lifetime.*
- d) The Respondent No.2 hereby undertakes to return to the Petitioner, 3 jewellery items being, one Mangalsutra belonging to the mother of the Petitioner, one Mangalsutra belonging to the maternal*

grandmother of the Petitioner and 1 gold chain belonging to Minor son Aarish at the time of filing the petition under section 13(B) for divorce before the Hon'ble Family Court, at Bandra.

II) CUSTODY AND MAINTENANCE OF MINOR SON AARISH

- a) The Petitioner and the Respondent No. 2 hereby agree and undertake that the permanent custody of son Aarish shall continue to remain with the Petitioner until Aarish acquires 21 years of age. Thereafter the custody of Aarish shall be decided according to his choice and both the Petitioner and the Respondent no. 2 undertake to accept and honor the same.*
- b) The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Respondent No. 2 shall be entitled for child access on alternate Saturday and Sunday of every month from 11:30 hrs to 17.00 hrs without disturbing Aarish education and extra activities. That the parties herein agree to adjust the extra-curricular activities of Aarish accordingly and at best suitable timings as per the consent term filed by them in Hon'ble Family Court, Bandra, Mumbai.*
- c) The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Respondent No. 2 will fetch Aarish directly from the school on second and fourth Saturday at 11:30 hrs and drop him on next day on Sunday at 17:00 hrs directly to chess classes/venue of other extra-curricular activities/ residence of the Petitioner as the case may be as agreed by them in their consent term filed by them in Hon'ble Family Court, Bandra, Mumbai.*

- d) *The Petitioner and the Respondent No. 2 hereby agree, that as Aarish is in growing stage his class timings and extra activities timings can change in future as per educational requirement or in the event of joining other classes in future. The Petitioner and the Respondent No. 2 hereby agree and undertake that, the total time of access, being 24 hrs including overnight stay granted to the Respondent No. 2 shall continue and the timings will be adjusted accordingly. The parties hereto undertake to co-operate with each other for any such change.*
- e) *The Petitioner and the Respondent No.2 hereby agree and undertake that, the Respondent no. 2 shall be entitled to 50% vacation access in Diwali, Christmas and school summer vacation of Aarish. During such period the Respondent No. 2 shall be responsible for dropping and fetching Aarish to his extra classes/activities.*
- f) *The Petitioner and the Respondent No.2 hereby agree and undertake that they shall give one-month prior intimation to each other before taking child Aarish out for trip in India or out of India during 50% vacation access. That neither the Petitioner nor the Respondent No.2 upon receiving such intimation from either of the parties shall plan same dates of travel of Aarish. The intimation shall be given on respective email ids of either of the parties as mentioned above.*
- g) *The Petitioner and the Respondent No. 2 hereby agrees and undertake that, the Passport of Aarish shall remain in the custody*

of the Petitioner, however the Petitioner undertakes to provide the same to the Respondent No. 2 whenever called upon for the purpose of obtaining Visa for an international trip. That, upon returning from the International Trip, the Respondent No. 2 undertakes to return the passport of Aarish to the Petitioner within a week. The Petitioner and the Respondent No. 2 hereby agrees and undertake that, they shall co-operate in affixing signatures on documents, forms and also appearing before the Passport/Visa or any other authorities for the purpose of obtaining Visa/Renewal for Passport or any other formalities for the aforesaid International Travel.

- h) The said communication will be done on a What`s app group as mentioned in clause “t” or on Email ID of the Petitioner being nikhilrasam20@gmail.com and Email ID of the Respondent No. 2 being sawantpooja06@gmail.com.*
- i) The Petitioner and the Respondent No.2 hereby agree and undertake that, the Petitioner will celebrate Aarish’s birthday at his residence, however in the event Aarish’s birthday falls on 2nd and 4th Saturday or Sunday regular access of the Respondent No. 2, then his birthday will be celebrated with Respondent no. 2 at her residence. In any event, both the Petitioner and the Respondent No. 2 shall have access of Aarish on every birthday for 2 hours as per his school/classes schedule. The said access will be availed by either of the parties from their respective residences or school as mutually agree. Nevertheless, the Petitioner and the Respondent No. 2 undertake to extend full co-operation with each other for the same and communication to that effect will be through the What`s App group as mentioned in*

clause “Aarish Family Group”.

- j) *The Petitioner and the Respondent No. 2 hereby agree and undertake that as both the parties are employed and earning, the educational fees along with donation if any of Aarish till he obtaining his graduation degree shall be borne by both the parties. The educational fees shall be paid as per the receipts issued by the educational institutions, however as far as donation is concerned the Respondent No. 2 shall share it equally subject to verification by her from the concerned authorities of the educational institution.*
- k) *The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Respondent no. 2 can attend all school/classes/ college meetings/functions of Aarish and the Petitioner shall give intimate his no objection to the school/classes/college.*
- l) *The Petitioner and the Respondent No.2 hereby agree and undertake that, in the event of unfortunate demise of either the Petitioner or the Respondent No. 2 before Aarish completes his higher education case then 50 % fees of his school/college/university and donation amount will be paid from the Petitioner’s as well as Respondent No. 2 provident fund money of either of the parties herein.*
- m) *The Petitioner and the Respondent No. 2 hereby agrees and undertakes that, in the event any of the parties loses their employment for reasons not attributed to the party thereof, the parties shall still continue to bear and pay 50% school/ college fees with donation till the completion of Aarish’s higher education.*

- n) The Petitioner hereby agrees and undertake that, the Petitioner will bear the expenses of Aarish's extra activities, classes and his school bus fees and the Respondent No. 2 shall be liable to pay only 50% of his school/college fees along with donation if any.*
- o) The Petitioner and the Respondent No.2 hereby agree and undertake that, all the medical expenses of Aarish will be borne by the Petitioner.*
- p) The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Respondent No. 2 will have liberty to speak with Aarish through a telephonic or a video call on mobile number of the Petitioner's mother twice a week.*
- q) The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Petitioner and his parents will not have objection if Respondent no. 2 takes Aarish for any family function while Aarish is in custody of Respondent No. 2.*
- r) The Petitioner and the Respondent No. 2 agree and undertake that the Respondent No. 2 shall reimburse to the Petitioner an amount of Rs.58,590/- being 50% of the tuition fees paid by the Petitioner at Parle Tilak Vidya Mandir Parle for the academic year 2023/ 2024. The Respondent No. 2 shall pay the said amount to the Petitioner by way of account transfer drawn in favour of the Petitioner and the same shall be transferred to the Petitioner at the time of filing of divorce petition in Hon'ble Family Court.*
- s) The Petitioner and the Respondent No. 2 hereby undertakes to*

bear 50% equally of the total fees of Aarish until he obtains Graduation Degree along with donation if any. The Petitioner undertakes to pay the first term fees directly to the account of the School whereas the Respondent No. 2 undertakes to pay the second term fees directly to the account of the School whereas the Respondent No. 2. The parties herein undertake that there shall be no delay in the payment of the school fees of Aarish and there will not be any delay of any nature in the same in any situation.

- t) The Petitioner and the Respondent No.2 hereby agree that all communications regarding Aarish shall be through, a group by name 'Aarish Family Group' only in which the parents of the Petitioner and the Respondent No. 2 shall be participants. The Petitioner and the Respondent understand that this group is formed only for the updates regarding timings, school/class functions, extracurricular activities of Aarish and hence undertake that apart from the messages regarding Aarish there shall strictly be no messages, posts, forwarded messages in this group posted by any of the parties herein including the parents of the Petitioner and the Respondent No. 2.*

III) WITHDRAWAL OF CASES:

- a) The Petitioner and the Respondent No. 2 hereby agree and undertakes that, the mother of the Petitioner shall withdraw the proceedings being CC No. 169/DV/2023 filed against the Respondent No. 2 pending before the Ld. Metropolitan Magistrate's 22nd Court, at Andheri, Mumbai within a period of one week from date of filing of their consent term in criminal petition u/s. 482 of Cr. P. C. pending before the Hon`ble Court.*

- b) *The Respondent No. 2 agrees and undertakes to file an Affidavit before this Hon'ble Court in Criminal Writ Petition No. 2816 of 2023 filed by the petitioner alongwith the present consent terms recording her no objection to quash and set aside CC no. PW/2157/2023 pending on the file of Ld. Metropolitan Magistrate's 26th Court, at Borivali, Mumbai (Originating from FIR no. 144 of 2023). The Petitioner and the Respondent No. 2 states and undertakes that in the event for any reason the Respondent No.2 is unable to remain present physically before Hon'ble high Court for giving consent for quashing of aforesaid proceedings, the Affidavit filed alongwith the consent terms shall be treated as full and final and the proceedings be quashed accordingly.*
- c) *The Petitioner has filed a case No. 127/ SW/2023, u/sec 384, 406, 420 IPC2 of IPC against the Respondent no. 2 before the Ld. Metropolitan Magistrate, 65th Court, Andheri, Mumbai and the same is pending adjudication. The Petitioner agrees and undertakes that he will withdraw the said proceedings being CC No. 127/ SW/2023 within a period of 1 week from the date of filing of consent term in Hon'ble Court for quashing of the FIR No. 144/ 2023.*
- d) *The Respondent No. 2 has filed petition before the Hon'ble Family Court at Bandra seeking divorce u/s. 13(1)(ia) (ib) of Hindu Marriage Act 1995 and the Respondent No. 2 undertakes to convert the said proceedings within a period of 1 weeks after quashing the FIR No. 144/ 2023.*
- e) *That the Respondent No. 2 agrees that she will inform the*

Andheri Police Station by a letter placing on record the present consent terms in regards to the NC bearing No. 2457/ 2022 dated 20/12/2022. The said letter will be issued by the respondent No.2 considering the future prospects of the Petitioner.

IV) MISC

- a) The Petitioner and the Respondent No. 2 hereby agree and undertake that, the Petitioner's mother's Vodafone sim card is in the name of Respondent No. 2. The same will be transferred by the Respondent No. 2 in the name of Petitioner's mother by visiting Vodafone Gallery within a period of 1 week from the date of filing of the present Consent Terms.*
- b) The Petitioner and the Respondent No. 2 agrees and undertakes that they shall sign the present Consent Terms and place them on record of this Hon`ble Court. That the present Consent Terms shall be filed in all the proceedings mentioned above for records and necessary compliance.*
- c) The parties herein undertake to remain personally present before any of the aforementioned Hon`ble Courts, if so directed in order to admit execution and compliance of the present Consent Terms.*
- d) The parties herein agree and accept that the Consent Terms entered upon by the parties is out of their own free will and consent, and without any force or coercion form anyone.*
- e) The Petitioner and the Respondent No. 2 hereby agree and undertake the Respondent No. 2 shall retain the articles, jewellery, stridhan that are in her possession at the time of*

converting the divorce petition before the Hon'ble Family Court, Bandra. That neither the Petitioner nor the Respondent No. 2 shall claim or counter claim of any manner against each other.

- f) The Petitioner and the Respondent No. 2 hereby agree and undertake that they shall not defame each other and their family members in society.*
- g) That, it is specifically understood by and between the parties that the Petitioner and the Respondent No. 2 shall not interfere in the personal and social life of each other and will not make any gossip in respect of their marriage, relationship and divorce on any print or electronic media or by way of mouth to mouth publicity with the friends, relatives and public at large of either of the party.*
- h) That Petitioner and the Respondent No. 2 shall not claim any kind of right in each other's and their family members movable and immovable properties or in any other assets in future.*
- i) The Petitioner and the Respondent No. 2 hereby agree and undertake that from the date of signing of the present Consent Terms, the terms mentioned herein are binding upon both the parties and the present Consent Term shall supersede any and all earlier Consent Terms executed by the parties herein.*
- j) the Petitioners state that, except the cases mentioned above there are no other petition/application is pending before any court of law.*
- k) The Respondent No. 2 shall delete her email ID from the Ola and*

Uber app used by the Petitioner.

- l) The Petitioner shall cooperate with the Respondent No. 2 for updating his mobile number in the documents pertaining to car insurance with Insurance Company of Nexon Car.*
- m) The Petitioner and the Respondent No. 2 hereby undertake to cooperate with each other for closure of the locker number Type B No. 06 with the SVC bank, Hanuman Road Bank, Vile Parle Branch. The Petitioner undertakes to remain present along with his mother at the said Branch situated at Hanuman Road, Vile Parle East as and when required for closure of the said locker.*
- n) The Petitioner shall grant his consent to delete the name from STF/6 account in SVC Bank of Hanuman Road branch as well as the account Bank of India in Chakala Branch.*
- o) The Petitioner and the Respondent No. 2 shall cooperate with each other and shall provide documents/OTP numbers/consent for periodic updation as well as validation of the Aadhaar card as regards to Aarish as well as to cooperate each other for any signature in future for any requirement of the official documentation.*
- p) That either of the Petitioner or the Respondent No. 2 fails to withdraw the cases filed by them against each other after filing of the Consent term before Hon'ble High Court as agreed by them in this Consent term then the cases will be reopened against each other.*

V] The petitioner and the Respondent no 2 hereby states that the

present consent terms are filed by them out of their own free will and accord and there is no force, coercion, fraud on any of the parties to sign and execute the same.

4. The Respondent No.2 has also filed her affidavit reiterating that the matter has been resolved amicably as per the consent terms tendered before the Court.

5. The petitioner and the respondent no.2 are present before the Court. They are identified by their respective Counsel. They have identified their signatures and confirmed the contents of the affidavit. They have reiterated that they have settled the dispute amicably as per the consent terms placed on record.

6. We are of the considered view that the settlement arrived between the parties is voluntary and genuine. The statement made in the consent terms are accepted as undertaking to the Court.

7. Considering that the parties have resolved the matrimonial dispute amicably, and as per the principles laid down by the Apex Court in ***B.S. Joshi & Ors. vs. State of Haryana. (2003) 4 SCC 675, Jitendra Raghuvanshi & Ors. vs. Babita Raghuvanshi & Ors***

(2013) 4 SCC 58, and **Rangappa Javoor vs. State of karnataka**
2023 Livelaw SC 74, we are of the considered view that this is a fit case to exercise the power under Section 226 of the Constitution of India, and to quash the FIR as well as the Criminal Proceedings arising therefrom. Hence, the writ petition is allowed in terms of prayer clause (b).

. FIR No.0144 of 2023 registered with Borivali Police Station, Mumbai, as well as C.C.No.2602157/PW/2023 pending on the file of Metropolitan Magistrate, 26th Court, Borivali, Mumbai, is hereby quashed.

8. Matter be listed on 18.01.2024 for compliance.

(N.R.BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)