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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 48 OF 2024

Divy Vastupal Mehta ... Applicant

Versus

State of Maharashtra ... Respondent

.....

Mr. Sushant Mishra for the Applicant.

Mr. Ajay Patil, Ms. Rutuja Ambekar, Ms. M.M. Deshmukh, APP for the State.

.....

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

DATED : 15 JANUARY 2024

P.C. :-

1. This is an application under Section 482 of Cr.P.C. to quash the F.I.R. No.133 of 2023 registered at Bhayander Police Station for the offences punishable under Sections 498-A, 377, 406, 323, 504 r/w. 34 of Indian Penal Code.

2. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.2. The marriage of Applicant No.1 and Respondent No.2 was solemnized on 11 November 2020. Respondent No.2 lodged the FIR on 22 March 2023 alleging that

her husband and his family members had subjected her to physical and mental cruelty. The allegations of unnatural sex are also levelled against the Applicant No.1-husband.

3. Learned Counsel for the Applicants and Respondent No.2 state that the parties have settled the dispute amicably. They have placed on record consent terms duly signed by the Applicants and Respondent No.2. The consent terms reads thus :

“1. Agreed, declared, and confirmed by the Petitioner No. 1 and Respondent No. 2 got married on 11/11/2020 at Arya Sarnaj, Goregaon (w) Mumbai.

2. Agreed, declared, and confirmed by the Petitioner No. 1 and the Respondent No. 2 that after the said marriage both the Petitioners stayed at the residence of Petitioner No.1 at Flat No. A-403, Soni Park, Chickuwadi, Borivali -West, Mumbai - 400092.

3. There is no issue born out of the said wedlock.

4. Agreed, declared and confirmed by the Petitioner No. 1 and the Respondent No. 2 that due to their respective modes of life, temperaments, ideas and ideals there arose disputes and differences between them and they could not stay together. The Petitioner No. 1 and the Respondent No. 2 started residing separately since 01/08/2021.

5. The Petitioner No. 1 and the Respondent No.2 state that it is not possible for them to stay together and for reunion between them and therefore the Petitioner No. 1 and the Respondent No.2 have

decided that the said marriage of Petitioner No. 1 and the Respondent No. 2 should be dissolved by mutual consent under u/s. 13-B of the Hindu Marriage Act, 1955. Further the Petitioner No.1 and Respondent No.2 have filed Marriage petition No. 406 of 2023 filed before the 2nd Jt. Civil Judge Senior Division, Thane under section 13-B of the Hindu Marriage act 1955.

6. The Petitioner No. 1 has agreed and undertakes that he shall give a lumpsum amount of Rs. 11,00,000/- (Rupees Eleven Lakh only) to Respondent No.2 towards her towards her past, present and future maintenance including her streedhan, permanent alimony and full and final settlement in the event that the Respondent No. 02 consents to participate and thereby consciously supports the reliefs/prayers in terms of quashment of Crime No. 133 of 2023 registered with the Bhayander Police Station, Thane District for offences punishable under Sections 377, 498-A, 406, 323, 504, and 34 of the Indian Penal Code, 1860 [IPC], as may be sought by the Petitioners in appropriate judicial proceedings i.e. this present Criminal Writ Petition pending before the Honourable High Court, Bombay.

7. The Petitioner No.1 shall, out of the entire amount of Rs. 11,00,000/- (Rupees Eleven Lakh Only), agrees and undertakes to offer to the Respondent No.2; an amount of Rs. 2,00,000/- (Rupees Two Lakh Only) which is already being offered to the Respondent No.2 during the withdrawal of the Cri.MA No. 792 of 2023 under section 125 of Code of Criminal Procedure, 1973 for Maintenance against the Petitioners before the 8th Jt. Civil Judge J.D, J.M.FC, at Thane against Petitioner No.1. The remaining amount of Rs. 9,00,000/- (Rupees Nine

Lakh Only) shall be offered to the Respondent No.2 in the event of pronouncement of the decree of divorce between the Petitioner No. 1 and the Respondent No. 2 in Marriage petition No. 406 of 2023 filed before the 2nd Jt.Civil Judge Senior Division, Thane under section 13-B of the Hindu Marriage act 1955.

8. In addition to the aforesaid, the Respondent No. 02 hereby agrees that she has received her personal belongings and streedhan from the Petitioner No. 1 and that no other belongings or streedhan of the Respondent No 2 is retained by the Petitioners with themselves individually or jointly.

9. The Respondent No. 2 has filed FIR bearing Crime No. 0133 of 2023 at Bhayandar Police Station, District Thane against the Petitioner No. 1 and his Parents, namely Mr. Vastupal Januji Mehta (petitioner No.2) And Mrs. Neeta Vastupal Mehta (petitioner No.3) under Sections 498-A, 406, 377, 323, 504 and 34 of the Indian Penal Code 1860 on 22/03/2023. The Respondent No.2 hereby agrees and undertakes that she shall express no objection to the quashment of FIR bearing Crime No. 0133 of 2023 at Bhayander Police Station. District Thane under Sections 498-A, 406, 377, 323, 504 and 34 of the Indian Penal Code, 1860.

10. It is agreed and confirmed between the parties that they shall not file any cases of civil, criminal or any nature whatsoever against each other or any of their respective family members after filing these consent terms.

11. Agreed and declared that both the parties undertake that henceforth they will not interfere in each other's lives or cause any type of nuisance or interference of any nature whatsoever and in addition to which the parties shall refrain from indulging any activity which may tantamount to defamation of either

of the parties or their respective family members.

12. Except the above there is/are no past present or future claim/s of whatsoever in nature inter se between the parties hereto. The parties have understood the terms as agreed upon and contained in the present consent terms and the complete meaning thereof. That the parties know to read and write English Language and also understand the complete meaning and purpose of the terms contained herein.”

4. Respondent No.2 has also tendered her Affidavit, wherein she had made a statement that the dispute is settled as per the consent terms arrived between the parties and that she does not wish to proceed against the Applicants.

5. Respondent No.2 is present before the Court. She is identified by her Advocate. Respondent admits her signature on the affidavit and confirms the contents of the Affidavit as well as the consent terms. She has further stated that she has no objection for quashing of the FIR and the Criminal Case arising therefrom. She reiterates that the matter has been settled as per the consent terms arrived between the parties. The consent terms are agreeable to the parties. The same are taken on record and marked ‘X’ for identification. The statements recorded in the consent terms are

accepted as an undertaking to the Court.

6. Having gone through the records, in our considered view, the offence under Section 377, IPC is not made out. The crime emanates from matrimonial dispute. The parties have voluntarily and willingly settled the matrimonial dispute as per the terms arrived between the parties. In such circumstances, continuance of criminal proceedings will be a futile exercise and amount to an abuse of process of the Court.

7. Considering the nature of offence 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 powers under Section 482 of Cr.PC. to secure the ends of justice. Hence, the order :

(i) The Application is allowed in terms of prayer clause (a).

(ii) F.I.R. No. 133 of 2023 registered at Bhayander Police Station stands quashed and set aside.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)