



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 5277 of 2024

...APPELLANT

VERSUS

STATE OF MAHARASHTRA & ANR.

...RESPONDENTS

J U D G M E N T

K. VINOD CHANDRAN, J.

Matrimonial acrimony has left the parties fighting in courts for eight long years, after a brief conjugal life of one year and nine months. The parties were both divorced once and had attempted yet another experiment at marriage, which too failed miserably. The appellant-husband asserts that the 2nd respondent-wife (hereinafter referred to as the respondent) got a fair settlement as alimony from the earlier divorce; which, we find at the outset, is irrelevant in the adjudication of the present dispute. The appellant has an

autistic child from the first marriage and the ownership of the apartment he jointly owned with his first wife was released in his favour in the best interest of the minor child. The parties were residing in the said apartment, viz: A-52, Kalpataru Habitat, Dr. S.S. Rao Road, Mumbai; which is one of the bone of contentions in the dispute, when they became estranged.

2. The appellant asserts that it was due to irreconcilable disputes resulting in constant harassment by the wife that he left the apartment and moved to Faridabad to stay with his parents and his differently abled child, also forsaking his lucrative employment in a private bank. The respondent on the other hand alleges continued intimidation and domestic violence at the hands of the appellant after which he abandoned her and left her high and dry without any means to survive. Only in desperation, she brought her parents to stay with her in the flat of the appellant; her matrimonial home.

3. The disputes between the appellant and the respondent resulted in a complaint Annexure P-3 filed *inter-alia* under

Section 498-A of the Indian Penal Code, 1860 (for brevity, 'I.P.C.') leading to registration of an F.I.R. which resulted in the launch of a criminal prosecution, to set aside which the appellant approached the High Court. The Order declining revisional jurisdiction under Section 482 of the Criminal Procedure Code, 1973 (for brevity, 'Cr.P.C.') has led to the present appeal. In the meanwhile, the respondent initiated a criminal prosecution under the Domestic Violence Act, 2005 against the appellant and his parents in May 2017, in which month itself the appellant filed a petition for divorce in the jurisdictional Court at Delhi. The Family Court, Saket, New Delhi before which the application for divorce was pending referred the matter for mediation to the Principal Counsellor. A settlement agreement was reached, which is annexed herewith as Annexure P-10, signed by both the parties on 01.09.2022.

4. The first motion dated 03.09.2022 for divorce on mutual consent under Section 13B of the Hindu Marriage Act, 1955 was moved by both the parties along with settlement entered

into between them, which was recorded by the Family Court on 14.09.2022. But before the second motion, the respondent-wife resiled from the agreement which prompted the appellant to approach the High Court of Bombay for quashing the criminal proceedings pending before the Metropolitan Magistrate, 15th Court at Sewree, Mumbai arising out of CR No.63 of 2018 dated 19.04.2018. The principal ground raised before the High Court was the appellant's withdrawal from the divorce on mutual consent, which according to the appellant justified the quashing of the criminal proceedings. The appellant also moved the High Court of Delhi alleging contempt insofar as withdrawing from the consent and refusing to follow it up on the second motion before the Family Court. A learned Single Judge of the Delhi High Court punished the respondent for contempt which order was set aside by the Division Bench on an appeal filed by the respondent.

5. We heard learned Senior Counsel, Smt. Madhavi Diwan for the appellant and the respondent who appeared in person

before us.

6. Learned Senior Counsel appearing for the appellant pointed out that the respondent had acted as per the settlement and then resiled from it without reasonable cause; obviously with the intention to coerce the appellant into a better settlement. The appellant, due to the marital discord, resigned his job to join his aged parents, who were unable to look after his autistic child. As of now he does not have the financial capacity he had when he was employed. The appellant is still ready to act in accordance with the terms of the settlement and convey the prime property; viz: the apartment he owns in Bombay which by any reasonable estimate would be valued at Rs.4 crores or in the alternative, is ready to pay Rs.4 crores to the appellant who should then vacate the premises. It is pointed out that along with the apartment he owns two parking spaces in the apartment complex, which also has the potential to generate income; which would be conveyed along with the apartment to the respondent. The appellant also gives up the claim as against

the two cars in his name, now in the custody of the respondent.

7. The respondent, however, is not agreeable to the offer made by the appellant and vehemently opposes each and every contention raised by the learned Senior Counsel. It is pointed out that the respondent does not have a job and the appellant is still lucratively employed. It is asserted from a LinkedIn profile, that the appellant continues in his earlier position with the Citi Bank and refers to the income tax returns filed in proof of the income of the appellant. It is also contended that the appellant has immovable properties worth crores and is running two businesses which generate sufficient income, while the respondent is in penury unable to raise funds for her daily upkeep. The respondent also relied on the various observations made by two Division Benches, one of the High Court of Bombay and the other of the High Court of Delhi which clearly brings out the attempt made by the appellant to coerce the respondent into following up with the application for divorce on mutual consent. It is also alleged that the agreement was entered into under coercion,

misrepresentation and fraud employed by the appellant on the respondent.

8. The appellant has now moved an application for divorce on mutual consent under Article 142 of the Constitution of India based on the judgment of this Court in ***Shilpa Sailesh v. Varun Sreenivasan***¹. The appellant pleads that the marriage cannot be retrieved and it is best that the parties go their respective ways and live a life of their choice. The appellant is still agreeable to comply with the terms of the agreement. The respondent submits that there are huge dues of maintenance with respect to the apartment which puts the respondent under threat of eviction. The respondent is not agreeable to the earlier terms as per Annexure P10 and prayed for permanent alimony of Rs.12 crores in addition to the encumbrance-free ownership of the apartment.

9. We are convinced that there is absolutely no way by which there can be a reconciliation between the parties and it would be futile on our part to attempt that, any further; which

¹ (2023) 14 SCC 231

persuades us to look into the facts coming out from the records of the case. The marriage between the appellant and the respondent was on 25.07.2015 and the first instance of a complaint made by the respondent is Annexure P-2 dated 30.03.2017 which is a written complaint to the jurisdictional police *inter alia* under Section 498-A of the I.P.C. The crime was registered only as per Annexure P-3 on 19.04.2018. We have looked at both Annexure P-2 and Annexure P-3 which makes general allegations of abuse, threats, levelling of allegations and accusations all relatable to marital disputes.

10. Surprisingly, Annexure P-3, which is a statement on which the crime was registered on 19.04.2018 speaks of the appellant having left Bombay for Faridabad, on the pretext of his father and son having fallen ill, on 06.04.2017. It is also stated that despite fervent pleas through e-mail to return, the appellant alleged schizophrenia on the respondent, accused her of having beat his son and also raised apprehension of her poisoning him. Allegations and counter allegations apart we perceive nothing more than ordinary marital squabbles,

skirmishes and bickerings blown out of proportion; often leading to eternal strife, then estrangement and eventually divorce, as has been the trajectory in this case too. The fact remains that, in the statement to the police dated 19.04.2018 while the respondent speaks of the appellant having abandoned her on 06.04.2017; even before that day, Ex.P2 complaint dated 30.03.2017 was made on similar allegations. The additional reply filed to the application under Article 142 of the Constitution of India by the respondent also states that the appellant started quarrelling frequently from 2016 onwards with the respondent and pursuant to a fight on 28.3.2017, she was abandoned on 06.04.2017. It is also admitted that she had been informed of the appellant's travel to Faridabad to look after his father and son, while the respondent was working at her office; establishing her gainful employment at the time of separation. It is after an year on 19.4.2018 that the FIR was registered on the statement of the appellant.

11. There were multiple proceedings pending against the

appellant filed by the respondent, when the appellant approached the Family Court at Mumbai for divorce, in which the mediation was held and there was a settlement entered into at Annexure P10. Annexure P10 dated 01.09.2022 spelt out the clear terms on which the parties decided to separate by way of a legal divorce on mutual consent. It specifically referred to the various proceedings between the parties which were agreed to be withdrawn after passing of the final decree of divorce. It was also agreed that no further civil or criminal cases would be filed against each other. The agreement required a deed to be executed and registered by the appellant gifting the apartment in Mumbai to the respondent; prior to which, the respondent also agreed to clear the outstanding loan with a bank, wherein the apartment was mortgaged. A demand draft of Rs.9,91,408.41, being the dues in the outstanding loan, was handed over to the appellant on 14.09.2022 itself, on which date the first motion for divorce on mutual consent was moved before the Family Court and recorded. The respondent had agreed to pay the

pending maintenance charges of the flat in which she was residing with her parents upon which a deed was to be drafted on mutual agreement gifting the property to the respondent and registered.

12. In paragraph 47 of the additional reply, the respondent has admitted that the maintenance due to the Society with respect to the apartment was not paid but not as a dilatory tactic and more because of the appellant having not provided the scanned copies of the documents relating to the apartment and her parents having fallen ill. It is also the specific contention of the respondent that she had requested the appellant to deposit the maintenance by way of an e-mail and promised to reimburse it at the time of registration of the flat. Though the e-mail has not been produced along with the additional reply, the appellant has stated that, after a surgery the father of the appellant had been discharged on 13.01.2023, as is evident from Annexure A33. This clearly indicates that the respondent was willing to go ahead with the settlement even as on that date. The respondent then turned

turtle to resile from the settlement on the ground that though provision of residence was made, there was no provision regarding future maintenance either on a monthly basis or a lump sum amount towards permanent alimony; putting bare the intention of the respondent in resiling from the agreement. The conduct of the appellant also puts to peril her contention that she was coerced into executing the settlement and the allegation of misrepresentation and fraud are blandly raised without any substantiation.

13. We have already found that the allegations in the statement of 19.04.2018 based on which the crime was registered against the appellant *inter-alia* under Section 498-A are common-place, banal and vague, without any specific instances mentioned and filed one year after the admitted separation of the couple. The High Court in the impugned order has rejected the contention of the appellant to quash the criminal proceedings with respect to the agreement having been resiled from, at the second motion. We cannot fault the findings of the High Court that the ground raised of the

respondent-wife having withdrawn from her consent on the second motion, is perfectly in exercise of the statutory right of the respondent-wife. However, but for a casual reference to the other grounds set out in the petition, the High Court has not considered those at all. It was observed peremptorily that the contrary statements of the witnesses should be tested in a trial and there is no question of the veracity of the allegations in the FIR or charge-sheet being considered, at this stage. This cannot be upheld especially when the statement leading to the charge-sheet does not have any grounds leading to an allegation under Section 498-A of the IPC.

14. We have already held, but for marital squabbles blown out of proportion there is nothing substantial in the complainant leading to the registration of crime under Section 498-A. Reference can be usefully made to the trite principle for exercise of powers under Section 482 of Cr.P.C. from the oft quoted decision in ***State of Haryana v. Bhajan Lal***². Suffice to refer to one of the grounds laid down by the

² 1992 Supp. (1) SCC 335

Constitution Bench, but with a caveat that there cannot be any precise, clearly defined and sufficiently channelized and inflexible guideline or rigid formulae :

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

15. The respondent who appeared in person has specifically taken us through the Division Bench order of the High Court of Delhi which absolved her from the contempt proceedings; especially the observation that the attempt of initiating the contempt is only a coercion to participate in the second motion for divorce. It was also found that an affidavit of undertaking recorded at the first motion would crystallise into an undertaking only if the terms are agreed upon and divorce is consented to by both the parties at the second motion. We are quite in agreement with the finding regarding the second motion, as already observed. But on the question

of the maintainability of contempt proceedings, we need not say anything further, since it has been informed across the Bar that there is an SLP filed from the said order and that in the event of closure of all proceedings under Article 142, the appellant would not pursue the same.

16. The facts as detailed by us herein above and the acrimonious relations between the parties for the last 8 years without any let-up and the multiple legal proceedings pending, clearly indicate that the relationship has irretrievably broken down. We are convinced that the invocation of Article 142 is imperative in the above case to do complete justice to both the parties, on being satisfied that the marriage has been rendered totally unworkable, emotionally dead and beyond salvation as held in ***Shilpa Sailesh***¹. What remains is only the terms on which the parties could go their separate ways to live their lives independently, without the yoke of a troubled marriage. The terms of the settlement agreed upon according to us, does justice to the estranged wife and does not unduly burden the husband.

17. As we noticed at the outset the alimony received by the respondent on the dissolution of her first marriage is not a relevant consideration. But the appellant's responsibility to look after an autistic child and his current financial status are relevant considerations. The apartment bearing No.A-52, Kalpataru Habitat, Dr. S.S. Rao Road, Mumbai is a very valuable asset, along with the two car parking areas. The gift of the said property by the appellant to the respondent would reasonably take care of the respondent-wife even after divorce. The respondent-wife is also a graduate Engineer with a Post-Graduate qualification in Management and was admittedly working, even at the time of the estrangement; termed as abandonment by the respondent.

18. As far as permanent alimony is concerned the respondent had no such claim when entering into a settlement. In fact, coercion, misrepresentation and fraud were alleged by the appellant, which we found to be unsubstantiated and remain in the realm of bland allegations. The respondent had even at the time of recording of the first

motion transferred an amount of about Rs.10 lacs by way of demand draft to the appellant for settling the loan in which the apartment was mortgaged. The appellant had settled the loan and has also released the mortgage. The respondent's contention before the High Court of Delhi was that the maintenance charges regarding the apartment have not been paid to the Society and she is under threat of eviction; which she repeated before us. The respondent had taken upon herself the responsibility of paying the maintenance charges, obviously since she was having possession & enjoyment of the apartment after the estrangement of the couple, wherein she is residing, even now, along with her parents.

19. We see from the order of the High Court of Delhi that as on 25.01.2025, there was a total due of Rs.25,90,701/- to the Society being the maintenance charges. The appellant who was present before us in-person has agreed to pay up the entire maintenance charges as on date.

20. Further claim of alimony is not justified, especially looking at the appellant's status which as of now is of an

unemployed person. We have seen the Income Tax Returns of the appellant as submitted by the respondent in her additional reply to the application under Article 142 which is produced in the additional reply at Annexure A10. It clearly indicates that the income of the appellant in 2013-2014 and 2015-2016 were respectively Rs.2,54,60,137/- and Rs.2,46,28,969/- when he was employed with Citi Bank. In the year 2018-2019, this has come down to Rs.50,34,120/- and in 2021-22 Rs.17,73,630/-. We find absolutely no reason to disbelieve the appellant's contention that he is no more in employment with Citi Bank. We refuse to place any reliance on the 'LinkedIn' profile as produced at Annexure A11 along with the additional reply. We also reckon the fact that the respondent-wife was gainfully employed and has the educational qualifications as also the potential, by way of her past experience in the field of information technology, to maintain herself. The gift of the encumbrance free apartment would suffice insofar as the compensation for separation. We are quite conscious of the fact that the first wife of the

appellant had released her half share in the apartment to the appellant, in the best interest of their minor child, who is still a minor and is also differently abled. We are convinced that it is also in the minor's best interest that the gift is made of the property by his father to the second wife so as to effectuate the divorce on mutual consent.

21. We hence quash the criminal proceedings initiated as CC No.136/PW/2018 pending before the Metropolitan Magistrate, 15th Court at Sewree Mumbai for offence punishable under Section 498-A, 406 r/w Section 34 of the IPC. We also allow the application filed under Article 142 of the Constitution of India dissolving the marriage between the appellant and the second respondent finding the marriage to have irretrievably broken down, in the best interest of both the parties and for doing complete justice, but subject to the following terms:

- I) The appellant shall deposit the entire arrears to the Society as on today and upto 1st September, 2025, with the Society as the maintenance charges for the

apartment namely A-52, Kalpataru Habitat, Dr. S.S. Rao Road, Mumbai, alongwith the two car parking areas upon which the Society shall give a no-encumbrance certificate to the appellant as also issue the ownership certificate in his name.

II) Along with the above documents the appellant shall execute a gift deed on or before 30.08.2025 on any date informed by written notice; by the appellant to the respondent, with due acknowledgment taken.

III) We have seen from the records that the draft of the deed was exchanged between the parties and both the appellant and the respondent No.2 shall be present before the jurisdictional Registrar for execution and registration on the date notified.

IV) If the respondent No.2 does not turn up on the said date, the jurisdictional Registrar shall acknowledge and record the presence of the appellant and in that event the appellant and the respondent shall be

present on 15.09.2025 before the Registrar for execution of the deed.

V) If the appellant does not comply with the above, then the order of divorce shall not come into effect. However, if the respondent does not present herself on the date notified by the appellant and on such failure even on the date specified by us, the divorce shall come into effect.

VI) All proceedings, civil and criminal, initiated by the parties to the marriage now dissolved, in relation to or arising out of such marriage, shall stand closed. There shall also be no further proceedings, both civil and criminal instituted, by the respective parties, on any aspect arising out of in relation to the marriage.

22. The Criminal Appeal stands allowed along with the application under Article 142 of the Constitution of India dissolving the marriage between the appellant and the second respondent on the ground of irretrievable break

down, subject to the terms and conditions specified above. All proceedings pending between the parties shall stand closed and there shall be no further proceedings initiated by either parties, relatable to their marriage, which stands dissolved by this judgment, on the terms and conditions being complied with.

23. Pending applications, if any, shall stand disposed of.

..... J.
(B.R. GAVAI)

..... J.
(K. VINOD CHANDRAN)

..... J.
(N. V. ANJARIA)

**NEW DELHI;
AUGUST 05, 2025.**