

**IN THE HIGH COURT OF KARNATAKA,  
CIRCUIT BENCH AT GULBARGA**

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2013

BEFORE

THE HON'BLE MR.JUSTICE ANAND BYRAREDDY

**CRIMINAL PETITION NO.15966/2012**

**BETWEEN:**

1. Nitin S/o Somanath Igave,  
Age: 38 Years, Occ: Accounts Manager,
2. Somanath S/o Laxman Igave,  
Age: 68 Years, Occ: Business/Agriculture,
3. Dattaram S/o Somanath Igave,  
Age: 45 Years, Occ: Business,

All are R/o: Ravoor, Taluk Chittapur,  
District Gulbarga. At present  
Residing at A-101, Amrut Prakash  
Apts. C.S.Road No.4 Bagalipada,  
Anand Nagar, Dahisar (E),  
Mumbai.  
Maharashtra-400 068.

... PETITIONERS

(By Shri. Ashok Mulage, Advocate)

**AND:**

1. The State of Karnataka  
Through Wadi Police Station,  
Taluk Chittapur,  
District Gulbarga.
2. Smt. Swathi W/o Nitin Igave,  
Age: 27 Years, Occ: House wife,  
R/o: 2-B/301, Dahisar Shivduut,  
Apartments, 3<sup>rd</sup> Floor, C.S.Road,  
Anand Nagar, Dahisar (East)  
Mumbai-400 068. ... RESPONDENTS

(By Sri Sanjay.A.Patil, Additional State Public Prosecutor  
for R1  
Notice to R2 service awaited )

This Criminal Petition is filed under Section 482 of Criminal Procedure Code by the advocate for the petitioner praying that this Court to set aside the order of taking cognizance by the JMFC Court Shahabad in C.C.No.82/2012 for the above said offences and quash the entire proceedings pending against the petitioners in C.C.No.82/2012 before the JMFC court Shahabad in Crime No.8/2012 of Wadi Police Station.

This petition coming on for Orders this day, the Court made the following:

**ORDER**

The present petition coming on for orders.

2. The learned counsel for the petitioner would bring to the attention of this court certain developments. It is stated that notwithstanding the criminal proceedings that are pending before the trial court wherein the second respondent had instituted proceedings for the offences punishable under Sections 323, 498(A), 504, 506 read with 34 of Indian Penal Code, 1860. The first petitioner who is her husband, the second petitioner who is her father in law and the third petitioner who is the brother in law of the second respondent and the accused herein.

3. It transpires that the first petitioner and the second respondent who have been living apart for over three years have reconciled to the situation, whereby they have decided to go their separate way and have filed petition for divorce by mutual consent under the Hindu Marriage Act, 1955. The same is pending consideration before the Family court, Gulbarga, and in terms of the consent offered, in order to give a quietus to the

proceedings between them, it is intended that the criminal case ought to be compounded. However, since the offences alleged are non-compoundable the parties are faced with the situation where they would not be in a position to mutually agree to the divorce, unless all matters between them are settled and it is this piquant situation which faces the parties.

4. Therefore, the learned counsel for the petitioner would submit that in the above circumstance which is not disputed by the other side, the very pendency of the criminal case is a futility. In that, it is evident that the respondent would not prosecute the case with any diligence and by the ratio of the decision of the Apex Court in the case of *Shiji @ Pappu and others V/s Radhika and another reported in 2012 ACR 116*, the proceedings being rendered futile, it is appropriate that this petition allowed summarily and the proceedings before the court below be quashed.

5. The learned counsel for the respondent does not dispute the situation that the first petitioner and the second respondent have filed a petition for divorce by mutual consent and that the criminal case is not intended to be prosecuted with any diligence in so far as the second respondent is concerned. This candid admission by the second respondent would certainly make out a case where the criminal proceedings are indeed a futility. In order to felicitate the parties to go their separate way it would be appropriate if the criminal proceedings are quashed. Accordingly, the present petition is allowed summarily and the proceedings pending before the court below are quashed.

**Sd/-  
JUDGE**

msr