

**SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1243/2021**  
**(@Petition for Special Leave to Appeal (Crl.) No.4695/2019)**

**HIRONMOY SEN & ANR.**

**Appellant(s)**

**VERSUS**

**THE STATE OF WEST BENGAL & ANR.**

**Respondent(s)**

**ORDER**

The Court is convened through video conference.

Leave granted.

**2.** The instant appeal is directed against the Order of the Learned Single Judge of the Calcutta High Court dated 30.01.2019, whereby CRR No. 1930 of 2017 filed by the appellants for quashing proceedings against them in connection with FIR No. 649 of 2012 was dismissed.

**3.** Appellant Nos. 1 & 2 are the husband and mother-in-law respectively of Respondent No. 2. Appellant No. 1 and Respondent No. 2 solemnized their marriage on 1<sup>st</sup> December, 1995, and they resided in their matrimonial home along with Appellant No. 2. The couple, however, could not pull on together for various reasons, which are not necessary to be noticed in view of subsequent developments stated hereinafter. Suffice to say that Appellant No. 1 and Respondent No. 2 were blessed with a girl child - Shivangi, born on 27<sup>th</sup> August, 1999.

The relations between the married couple soured even further.

**4.** Resultantly, Appellant No. 1 and Respondent No. 2 started residing separately from each other on a permanent basis from May 2010 onwards.

**5.** The alleged acts of violence attributed to Appellant No. 1 eventually led Respondent No. 2 to file a complaint, on the basis of which the subject FIR was registered. Appellants attempted to quash the proceedings in connection with the FIR but their applications were rejected in succession by the Judicial Magistrate, and then by the Learned Single Judge of the Calcutta High Court. Hence, the Appellants are before this Court.

**6.** When the case first came up for hearing on 2<sup>nd</sup> July, 2019, the matter was referred to mediation at the Supreme Court Mediation Centre. After an interlude of 2 years, when the matter came up again on 8<sup>th</sup> July, 2021, their learned counsel stated that the parties were amenable to a settlement and 6 weeks' time was granted to file a Compromise memo.

**7.** An Affidavit for Mutual Consent Terms on behalf of Appellant No. 1 and Respondent No. 2 dated 5<sup>th</sup> August, 2021, was duly filed on 11<sup>th</sup> August, 2021. Affidavit for Mutual Consent Terms ("Mutual Consent Terms") on behalf of Appellant No. 1 and his wife -

Respondent No. 2, reads as follows:-

**“a) The Petitioner No. 1 i.e. Mr. Hironmoy Sen and the Original complainant/Respondent No. 2, Sarbani Sen i.e. the wife of the Petitioner No. I herein, have agreed to file the present consent terms as the issues which arose during the course of their marriage are now settled by and between them amicably. The Petitioner No. I and the Respondent No. 2 have specifically agreed to file the present Consent Terms in this Hon'ble Court.**

**b) The Petitioner No. 1 and the Respondent No. 2 have filed an application, being Matrimonial Suit no. 1489 of 2021 for dissolution or their marriage by divorce on mutual consent under Section 13B of the Hindu Marriage Act, 1955 before the Court of the Learned District Judge, South 24 Parganas, Alipore.**

**c) After the mutual settlement discussion by and between the Petitioner No. 1 and Respondent No. 2, the Petitioner No. 1 has agreed to pay an amount of Rs. 90,00,000/- (Rupees Ninety Lakhs only) as full and final settlement towards alimony/maintenance/ monetary allowance /Settlement amount, which will be remitted to the Respondent No.2.**

**d) The Petitioner No.1 has agreed to pay and has accordingly paid an additional sum of Rs. 2,01,000/- (Rupees Two Lakhs One Thousand) only to the Respondent No. 2 which is equivalent to the claim made by the Respondent No. 2 as arrear alimony *pendente lite* regarding the dispute of the school admission fees of the daughter, while the minor was in custody of the Wife/Original Complainant/Respondent No.2. The Respondent No. 2 shall not make any further claim in that regard since the same is being paid to her.**

e) The Petitioner No. I has also agreed to pay an amount of Rs. 1,98,000/- (Rupees One Lakh Ninety Eight Thousand) only to the Respondent No.2 as interest on Rs.90,00,000/- (Rupees Ninety Lakhs) only for an approximate estimated period of six months at the prevalent interest rate for fixed deposit for 181 days and has accordingly paid the same.

f) The Petitioner No. I will pay additional monthly amount proportionate to the interest as mentioned above if the final date of hearing of the application of mutual divorce is fixed by the Court beyond a period of six months. However, if the final hearing of the application is delayed due to any reason involving the wife/Respondent No. 2, the Petitioner No. 1 shall not be liable to pay any further interest.

g) The amounts of Rs. 2,01,000/- (Rupees Two Lakhs One Thousand) only and Rs.1,98,000/- (Rupees One Lakh Ninety Eight Thousand) only i.e. a total amount of Rs.3,99,000/- (Rupees Three Lakhs Ninety Nine Thousand) only has been paid by the Petitioner No.1, while the permanent alimony of Rs.90,00,000/- (Rupees Ninety Lakhs) only will be paid on the day of final hearing of the application or mutual divorce or before the passing of the order of divorce (whichever is earlier}.

h) It has been mutually agreed by and between the Petitioner No.1 and the Respondent No. 2 that the Petitioner No. 1 will stop paying the alimony *pendente lite* of Rs. 50,000/- (Rupees Fifty Thousand) only to the Respondent No. 2 once the sum of Rs.3,99,000/- (Rupees Three Lakhs Ninety Nine Thousand) only is paid to the Respondent No.2 and has accordingly stopped paying the same on agreed terms.

i) The Respondent No.2 has agreed to the same and will not claim any amount of alimony *pendente lite* on payment of

**Rs 3,99,000/- (Rupees Three Lakhs Ninety Nine Thousand) only. The Respondent No. 2 will file necessary applications before the Court in this regard.**

**j) The Petitioner No. 1 has agreed that he will not proceed with C.O No. 4336 of 2018 pending before the Hon'ble High Court at Calcutta and will file necessary applications for disposal of the same in view of the settlement reached. The Respondent No. 2 has agreed to co-operate with the Petitioner No. 1 in this regard and will file necessary applications, if required. In view of the settlement reached above, since in effect the order of the Ld. Trial Court dated 15.03.2018 would stand confirmed, the Petitioner No. 1 has further agreed to pay the sum of Rs.21,224/- as ordered by the Ld. Trial Court along with Rs 1,79,776/- which has been deducted by the Petitioner No.1 from the alimony *pendente lite* of the Respondent No.2 i.e. in total Rs.2,01,000/- over and above the permanent alimony of Rs 90,00,000/- (Rupees Ninety Lakhs) only as agreed by and between them and has accordingly paid the same.**

**k) Since the dispute has been amicably settled by and between the parties, the Respondent No.2 is no longer willing to proceed with the criminal case, being Jadavpur P.S. Case No.649/2012 (A.C.G.R. 12561/12), which is still pending before the Court of the Learned 10th Judicial Magistrate at Alipore. The Respondent No. 2 shall make every endeavor so that the Petitioner No. 1 and his mother Mrs. Reba Sen are discharged/acquitted from the said case before the application of final hearing of the Section 13B Hindu Marriage Act or before the passing of the order of divorce (whichever is earlier).**

**l) The Petitioner No. 1 has further agreed to transfer the property being Flat No.2A. 42 Jadavpur Central Road, Kolkata**

**700 032. Police Station- Jadavpur together with the car parking space mentioned in the sale deed of Flat no. 2A. 42, Jadavpur Central Road, Kolkata 700 032 (the car parking in the front side of the apartment) by executing a Deed of Gift in favour of the Respondent No.2. The execution of such Deed of Gift shall be made on or before the date of final hearing of the application for mutual divorce or before the order of the divorce is passed (whichever is earlier) and the Petitioner No. 1 will make all the necessary arrangements to get it done on that date. The Respondent No. 2 will co-operate with the husband in this regard. The expenses for the stamp duty, registration fees etc. for the transfer of the property will be borne by the Petitioner No.1.**

**m) That, after the full compliance of above stated Clauses (a) to (l), the Petitioner No. 1 and the Respondent No. 2 shall have no objections if the Hon'ble Supreme Court of India quashes the proceedings in connection with the F.I.R. which was filed by the Respondent No.2 against the present Petitioner No. 1 and his mother Mrs. Reba Sen bearing Jadavpur Police Station Case No. 649/2012 dated 18.11.2012 (corresponding to ACGR No. 12561/2012) for alleged offences under section 498A, 323 and 114 of Indian Penal Code, 1860.**

**n) That in view of the settlement arrived at, the Respondent No.2 shall not claim any amount of alimony *pendente lite*, alleged arrear or otherwise, and shall withdraw all her claims regarding alimony/maintenance. The Respondent No.2 shall not claim any alimony/maintenance from the Petitioner No. 1 (apart from the settled amount of permanent alimony) in future. Any further claim for alimony/maintenance by the Respondent No. 2 other than the settled amount of**

permanent alimony as detailed hereinabove shall be treated as void.

**o) That, both the Petitioner No.1 and the Respondent No.2 have no objections, if the Hon'ble Supreme Court exercises its power vested by Article 142 of the Constitution of India and dissolves/quashes the pending litigation as mentioned in Clause (k) against the Petitioner No.1 and his mother Mrs. Reba Sen after the Petitioner No. 1 hands over the cheques/demand drafts for permanent alimony to the Respondent No.2, in presence of only the legal representatives of both the parties.**

**p) That both the Petitioner No.1 and the Respondent No.2 have no objections, if the Hon'ble Supreme Court exercises its power vested by Article 142 of the Constitution of India and dissolves the existing marriage between the Petitioner No. 1 and the Respondent No.2 solemnized on 1.12.1995 at 136, Santoshpur Avenue, Kolkata 700075 according to Hindu rites and customs after the Petitioner No. 1 hands over the cheques/demand drafts for permanent alimony to the Respondent No.2.**

**q) That both the Petitioner No. 1 and Respondent No.2 waive off their right permanently from any claims on alimony, maintenance, or property, movable or immovable or any claims against each other and their respective families, after the quashing of proceedings.**

**r) That both the Petitioner No. 1 and Respondent No.2 waive off their right permanently from any claims on alimony, maintenance or property, movable or immovable or any claims against each other and their respective families, after the decree of divorce.**

s) It is agreed by both the Petitioner No.1 and Respondent No. 2 that after the present consent terms, the parties shall not claim from each other or their respective families, any kind of compensation or any right in movable or immovable property or inheritance property thereof.

t) That, both the Petitioner No. 1 and Respondent No.2 also agree that they or their families shall not file any civil, criminal or any kind of complaints or cases against each other and their respective family members.

u) That, both the Petitioner No. 1 and Respondent No.2 shall not interfere in each other's personal or professional life after execution of the present consent terms. That, both the Petitioner No. 1 and Respondent No.2 undertake that they shall not post any defamatory post on social media during pendency of the proceedings and after decree of divorce.

v) The present Consent Terms represent the entire agreement between the Petitioner No.1 and Respondent No. 2 in respect of the matter at hand and shall supersede all prior negotiation or agreements. All prior understandings, agreements and negotiations between the Petitioner No. 1 and Respondent No.2 shall be merged into these Consent Terms.

w) It is agreed between the parties shall except the above-mentioned clauses there are no other exchanges pending between them.

x) The Petitioner No. 1 and Respondent No.2 hereby declare that they have obtained independent legal advice and they are executing this Consent Terms with their own free will. By entering into this Consent Terms, the Petitioner No. 1 and Respondent No.2 represent that they have relied upon the legal



**advice of their lawyer, and that the terms of this Consent Terms have been completely read and explained to both the Petitioner No. 1 and Respondent No. 2 by their lawyers, and that those terms are fully understood and voluntarily accepted by the both the Petitioner No.1 and Respondent No. 2.**

**y) The Petitioner No. 1 and the Respondent No. 2 state that the present consent terms constitute the full and final settlement between both the parties. The Petitioner No. 1 and the Respondent No. 2 undertakes that no further claims and/or demands, of any nature whatsoever, will be raised by either of them against each other in further, even under changed circumstances. Further, save and except that whatever is mentioned here-in-above, the Petitioner No. 1 and the Respondent No.2 shall have no claims of any nature whatsoever against each other.**

**z) The Parties herein hereby covenant with each other that they shall comply with and accept the afore-stated consent terms in toto.**

**aa) The Present consent terms constitute one composite whole and none of the terms are severable from each other.**

**bb) Both the Petitioner No.1 and Respondent No.2 have given their consent of their own free will and without any fraud or undue influence upon them.”**

**8.** In terms of the abovementioned Mutual Consent Terms: i) Appellant No. 1 & Respondent No. 2 have filed an application for divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955, in MS No. 1489 of 2021 before the District Judge, Alipore; ii) Appellant No. 1 has agreed to pay Rs. 90 Lakhs, with an additional

Rs. 1,98,000 as interest, to Respondent No. 2 as full and final alimony/maintenance; iii) A further sum of Rs. 2,01,000 is agreed to be paid as arrears of alimony *pendente lite*, which is the amount corresponding to their daughter's school fees; iv) That Appellant No. 1 has paid the aforementioned amount of Rs.1,98,000 in interest, as well as the amount of Rs. 2,01,000 paid as arrears of alimony *pendente lite*. Thus, a total of Rs.3,99,000 has been paid by Appellant No. 1 to Respondent No. 2 already; v) The permanent alimony amount of Rs.90,00,000 will be paid on the day of the final hearing of the aforementioned application for mutual divorce, or before passing of the order of divorce, whichever is earlier; vi) Appellant No. 1 would transfer a flat along with the car parking space associated with it to Respondent No. 2 vide a Deed of Gift; vii) After compliance with the abovementioned conditions, the parties would take steps to withdraw/dispose of all cases they have filed against each other, and would have no objection if the Supreme Court were to quash such proceedings under Article 142; viii) The parties would have no objection if the Supreme Court dissolved the marriage between the parties under Article 142; ix) That the parties would not raise any further claims or seek any further maintenance/compensation from each other, and would refrain from posting any defamatory content

online against each other.

**9.** Since the Mutual Consent Terms were totally silent about several aspects pertaining to the well-being of the daughter, Shivangi, this Court on 4<sup>th</sup> October, 2021, directed Appellant No.1 to file an additional affidavit explaining how her educational expenses and other needs would be taken care of. Such an information was felt necessary as Respondent No. 2 had filed an application in 2012 via Act VII Case No. 79 of 2012, seeking permanent custody of their daughter. However, Respondent No. 2 subsequently sought for the custody petition to be dismissed on the ground that their daughter was better off in the custody of Appellant No. 1 as she, Respondent No. 2, lacked the resources to properly care for her. The custody petition was duly dismissed for non-prosecution by the 9<sup>th</sup> Additional District Judge, Alipore, on 14<sup>th</sup> June, 2016. Appellant No. 1 was, thus, obligated to financially contribute toward the well-being of their daughter.

**10.** In compliance with the aforementioned order of this Court, an Additional Affidavit dated 8<sup>th</sup> October, 2021, has been filed by Appellant No. 1 on 12<sup>th</sup> October, 2021. The Additional Affidavit states that Appellant No. 1 would bear all the educational expenses of his daughter, who is currently studying in the University of Westminster in the United Kingdom. He has further represented that he would be

responsible for all her future expenses, including medical, maintenance, marriage and so on.

**11.** The relevant extracts of the Additional Affidavit are reproduced below:

- “d) I, the Petitioner No. 1 state that I have always incurred all the expenses related to my daughter’s education, maintenance, health etc. since she was born. While she was in the custody of my wife, the Respondent No. 2 in the present Petition, I continued to maintain my daughter by unilaterally incurring all her expenses. That further in compliance with the Order dated 20.04.2016 passed by the Hon’ble High Court of Judicature at Calcutta in C.O. No.838 of 2016 pertaining to the alimony *pendente lite* for the Respondent No.2 and our daughter on and from March, 2016. I have regularly paid sum of Rs.94,000/- (Rupees Ninety Four Thousand) for the maintenance of the Respondent No. 2 and our daughter.**
- e) I, the Petitioner No. 1 state I took the custody of my daughter in August, 2016. My daughter then passed her Class XII ISC Board Examination from La Martinere School for Girls, Kolkata with distinction in First Division. My daughter was then admitted to St. Xavier’s College, Calcutta with English (Honours) according to her academic interest and graduated from the College in First Class. I, the Petitioner No.1 incurred all the expenses for the maintenance of my daughter including her academics expenses, in the duration of the entire period.**
- f) I, the Petitioner No. 1 state that presently my daughter has been admitted in the University of Westminster, United**

**Kingdom for Post-Graduation in Multimedia Journalism as per her academic interests. In regard with the same, I the Petitioner No.1, have incurred all the expenses for her said academic course, her stay in the United Kingdom and all the other related expenses keeping her needs, desires, comfort and best interest in view, and shall continue to pay the same in future.**

- g) I, the Petitioner No. 1 have always taken the responsibility of all the expenses of my daughter including her educational expenses and I assure and undertake to take all financial responsibility for my daughter's future education, medical expenses, maintenance, marriage and for her welfare.**
- h) I, the Petitioner No. 1 state that I have already complied with all the consent terms filed before this Hon'ble Court set out in the Affidavit dated 11.08.2021."**

**12.** Thus, the Mutual Consent Terms dated 5<sup>th</sup> August, 2021, and the Additional Affidavit dated 8<sup>th</sup> October, 2021, should be read together as encompassing the full and final settlement between the parties.

**13.** It is in this backdrop that the parties jointly requested, on 20<sup>th</sup> October, 2021, that this Court may dissolve the marriage of Appellant No. 1 and Respondent No. 2. Such an eventuality is also contemplated under the Mutual Consent Terms dated 5<sup>th</sup> August, 2021, between Appellant No. 1 and Respondent No. 2, which states under point "(p)" that the parties will have no objection if this Court

were to dissolve their marriage by invoking its powers under Article 142 of the Constitution, so as to do complete justice to them.

**14.** All the disputes between the parties have been thus fully and finally resolved by Mutual Consent Terms dated 5<sup>th</sup> August 2021, and the Additional Affidavit filed by Appellant No. 1 on 8<sup>th</sup> October, 2021. The present and future needs of their daughter have also been adequately addressed by Appellant No. 1's representation to bear all her educational and other expenses. The daughter is now of major age and is already studying in a reputed university in the United Kingdom. In furtherance of the Additional Affidavit, Appellant No. 1 is directed to ensure that every expense and requirement of his daughter shall be taken care by him until such a time when she is married and becomes completely independent. The obligation of Appellant No. 1 to maintain his daughter and address her every need will continue and is binding on him.

**15.** Further, the parties have been living separately since May 2010 and have been engaged in legal proceedings against each other. Their marriage is evidently a dead letter.

**16.** This Court has, in a catena of previous judgments, invoked its powers under Article 142 of the Constitution to dissolve a marriage, such as in *Sneha Parikh v. Manit Kumar*<sup>1</sup>. It is unnecessary to

belabour the point by reproducing all these rulings.

**17.** In line with these consistent pronouncements, we consider it appropriate to grant the relief sought by the parties for mutual divorce. Appellant No. 1 and Respondent No. 2 have been estranged for over a decade, and the interests of their daughter have already been safeguarded in terms of the Additional Affidavit dated 8<sup>th</sup> October, 2021 by Appellant No. 1. The Mutual Consent Terms dated 5<sup>th</sup> August, 2021, also make it clear that neither party has any objection if this Court were to dissolve their marriage via exercise of its powers under Article 142.

**18.** For the reasons aforesaid, the marriage between Appellant No. 1 and Respondent No. 2 is dissolved by way of mutual consent, subject to the condition that Appellant No. 1 pays the balance amount of alimony/maintenance to Respondent No. 2 within one week from the date of this order. After the entire amount is paid, the marriage between Appellant No. 1 and Respondent No. 2 shall stand finally dissolved. Further, the parties shall continue to abide by the terms and conditions of the Mutual Consent Terms dated 5<sup>th</sup> August, 2021, and the Additional Affidavit dated 8<sup>th</sup> October, 2021. As a result thereto, all the pending criminal or civil cases, including the FIR No. 649 of 2012 dated 18<sup>th</sup> November, 2012, registered at P.S. Jadavpur,

are hereby quashed.

**19.** The appeal is disposed of in the aforementioned terms. The Terms of Mutual Consent and the Additional Affidavit shall form part of this Order.

.....**CJI**  
**(N.V. RAMANA)**

.....**J.**  
**(SURYA KANT)**

.....**J.**  
**(HIMA KOHLI)**

**NEW DELHI;**  
**20TH OCTOBER, 2021.**



ITEM NO.24

Court 1 (Video Conferencing)

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.4695/2019

(Arising out of impugned final judgment and order dated 30-01-2019 in CRR No. 1930/2017 passed by the High Court at Calcutta)

HIRONMOY SEN &amp; ANR.

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL &amp; ANR.

Respondent(s)

Date : 20-10-2021 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s)

Ms. Bansuri Swaraj, Adv.  
Mr. Siddhesh Kotwal, Adv.  
Ms. Ana Upadhyay, Adv.  
Ms. Manya Hasija, Adv.  
Ms. Pragya Barsaiyan, Adv.  
Mr. Akash Singh, Adv.  
Mr. Nirnimesh Dube, AOR

For Respondent(s)

Mr. Chanchal Kumar Ganguli, AOR  
Mr. Soumitra G. Chaudhuri, Adv.  
  
Mr. Rohit Dutta, Adv.  
Mr. Sayak Chakraborti, Adv.  
Mr. Wrickbrata Roy, Adv.  
Ms. Ananya Banerjee, Adv.  
Ms. Tina Garg, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The Court is convened through Video Conferencing.

Leave granted.

The appeal is disposed of in terms of the signed order.

(VISHAL ANAND)  
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)  
COURT MASTER (NSH)

(Signed Order is placed on the file)