

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO.2027 OF 2015**

- 1) Rajesh Jaisinghrao Shitole,
Age-38 years, Occupation: Business,
R/o-Plot No.F-46, Gujarat Housing
Board Society, Amreli,
Tq. & Dist-Amreli (Gujrat),
- 2) Urmilaben Jaisinghrao Shitole,
Age-67 years, Occupation: Housewife,
R/o-Plot No.F-46, Gujarat Housing
Board Society, Amreli,
Tq. & Dist-Amreli (Gujrat),
- 3) Dipali Jaisinghrao Shitole,
Age-33 years, Occupation: Household,
R/o-Plot No.F-46, Gujarat Housing
Board Society, Amreli,
Tq. & Dist-Amreli (Gujrat),
- 4) Rajshri Hemantrao Shinde,
Age-30 years, Occupation:Housewife,
R/o-Shindewadi, Shastrinagar,
Dombivali, Dist-Thane,
- 5) Hemantrao Bajirao Shinde,
Age-35 years, Occupation:Business,
R/o-Shindewadi, Shastrinagar,
Dombivali, Dist-Thane,
- 6) Nayanaben Sureshkumar Padhya,
Age-35 years, Occupation:Housewife,
R/o-T.C.M. Nirnaynagar, B.N. 101/102,
Krushna Apartment, Ramdeonagar,
Satellite, Ahmedabad (Gujarat),

- 7) Sureshkumar Madhusudhan Padhya,
Age-40 years, Occupation:Judicial Service,
R/o-T.C.M. Nirnaynagar, B.N. 101/102,
Krushna Apartment, Ramdeonagar,
Satellite, Ahmedabad (Gujarat),

...APPLICANTS
(Ori. Accused)

VERSUS

- 1) The State of Maharashtra,
- 2) Suvarna Rajesh Shitole,
Age-32 years, Occupation:Nil,
At present C/o- Vasantryao Vamanrao Patil,
R/o-Kirwade, Tq-Sakri,
Dist-Dhule.

...RESPONDENTS

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Mr.Joydeep Chatterji Advocate for Applicants.
Mr.V.D. Godbharle, A.P.P. for Respondent No.1.
Mr.K.C. Sant Advocate for Respondent No.2.

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CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

DATE : 31ST JULY, 2015

ORAL ORDER :

1. Rule, made returnable forthwith and heard finally with consent of the parties.
2. The Respondent No.2 herein lodged FIR being

Crime No.157 of 2007 for the offence punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act on 8th December 2007. On the basis of said FIR, investigation was set in motion. Charge-sheet came to be filed and case was registered as R.C.C. No.284 of 2008, which is pending before the learned Judicial Magistrate, First Class, Sakri, Dist-Dhule.

3. This Application is filed by the Applicants praying therein for quashing the said proceedings on the ground that Applicant No.1 and Respondent No.2 herein jointly filed H.M.P. No.103 of 2011 on 19th March 2011 under Section 13(B) of the Hindu Marriage Act for divorce by mutual consent before the Civil Judge, Senior Division, Dhule. By an order dated 20th September 2011, said Petition was allowed and it was declared that the marriage between Applicant No.1 and Respondent No.2 is dissolved. In the aforesaid

back-ground, the present Application is filed for quashing and setting aside the FIR - Crime No.157 of 2007 dated 08th December 2007 registered at Sakri Police Station, District Dhule and consequent Charge-sheet - R.C.C. No.284 of 2008 arising therefrom and pending before learned Judicial Magistrate First Class, Sakri, District Dhule.

4. In pursuance to the notices issued to the Respondents, the Respondent No.2 has filed affidavit. Paras 1 and 2 of the said affidavit reads as under:

"1. A charge-sheet came to be filed on the basis of investigation and case was registered as R.C.C. No.214/2008. There were other proceedings also started between the parties in the Court of Law. I say that, at the intervention of the elderly persons and with a view to compromise the matter, compromise terms were drawn. The main contention and term was that both the

parties would withdraw all the proceedings pending between the parties on their own. This was the settlement arrived between the parties. The compromise was recorded in between the parties. The compromise was recorded in H.M.P. No. 103/2011 in the Court of Id. Civil Judge, Senior Division, Dhule. On the basis of the same, H.M.P. came to be disposed off by order dated 20.9.2011 and decree was drawn. I say that, though the cases were to be withdrawn, it could not be done for various reasons. The deponent went to reside at Mumbai with her brother and she was not residing at Dhule. Secondly, there was no communication. She was not aware about the proceedings which are filed by the petitioner side whether are withdrawn. She apprehends that other in laws may have lodged some complaints in Gujarat where she was residing for some period with applicant no.1. She also has apprehension that applicant No.7 may take some legal action against this deponent. Respondent No.7 is a judicial officer in Gujarat judicial services. The Petitioner No.7 used to threat that he would take recourse to legal remedies as he is from

judicial services. Petitioner No.6 & 7 have not appeared in the proceedings as per knowledge of this deponent. It is for this reason, it is necessary to get assurance from all the applicants that there is proceedings pending against this deponent neither they will take out any legal proceedings against this deponent before passing appropriate order in this criminal application.

2. In view of the above, she has no objection to allow this criminal application."

5. Upon careful perusal of the averments in the affidavit, it appears that Respondent No.2 has expressed apprehension that Application No.7 may take some legal action against the Respondent No.2 since he is Judicial Officer in Gujarat Judicial Services. The further apprehension is that Applicant Nos.6 and 7 have not appeared in the proceedings and therefore they may initiate proceedings against Respondent No.2.

6. The learned counsel appearing for the Applicants, on instructions of Applicant Nos.6 and 7, makes a statement that Applicant Nos.6 and 7 will not initiate any proceedings against the Respondent No.2.

. Counsel for Respondent No.2 submits that in view of such statement of counsel for the Applicants, there is no objection to allow the Application.

7. Keeping in view the observations of the Apex Court in the case of ***Gian Singh Vs. State of Punjab and another reported in 2012(4) Bom.C.R. (Cri) 428***, that the High Court can exercise jurisdiction under Section 482 of the Code of Criminal Procedure to quash the FIR, so as to secure the ends of justice and to prevent the abuse of the process of Court, in the peculiar facts and circumstances of this case, we are

inclined to allow this Application in terms of prayer clause (B) of the Application.

8. In that view of the matter, Rule made absolute in terms of prayer clause (B) of the Application. Criminal Application stands disposed of, accordingly.

[A.I.S.CHEEMA, J.]

asb/JUL15

[S.S.SHINDE, J.]