

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 5111 OF 2017

Dr. Jitesh Daba Shetty

....Petitioner
(Orig. Accused)

V/s.

1. State of Maharashtra
and anr.

....Respondents

* * * * *

Ms. Krupali H. Rajani, Advocate for the petitioner.

Mrs. A.S. Pai, Additional Public Prosecutor for respondent
no.1, State.

Mr. Sujay Gawade a/w. Ms. Anita Dubey, Advocate for
respondent no.2.

CORAM :-

R.M. SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

23RD FEBRUARY, 2018.

P.C. :-

1. The above Writ Petition has been filed for quashing of the FIR being 391 of 2017 registered with the Malad Police Station on 25th September, 2017 for the offences punishable under Sections 504, 324 and 323 of

the Indian Penal Code. The said FIR has been lodged by the respondent no.2. The petitioner and the respondent no.2 are husband and wife and the FIR seems to have arisen out of the matrimonial dispute between the parties. Be that as it may, the respondent no.2 has filed an Affidavit dated 1st November, 2017 affirmed before the Notary Public, D.R. Kudrigi having his Registration No. 5597. The said Affidavit is entered at Serial no.10041 against the date 21st November, 2017. In the context of the relief sought in the above petition, para-4 of the said Affidavit is material and is reproduced hereinunder :

“4. I say and submit that I do not want to continue with the present case and also I do not wish to prosecute my Complaint being FIR no. 391/2017 U/S 504, 324, 323 OF INDIAN PENAL CODE registered with MALAD POLICE STATION, MUMBAI as I have agreed to cooperate quash the present FIR on signing of the consent terms before the Hon'ble Family Court Bandra in the Custody Petition.”

2. It appears, the parties were before the Family Court, Mumbai in Petition No. B-32 of 2017 filed by the

respondent no.2 for custody and injunction. The parties in the course of the said proceedings have arrived at Consent Terms which have been reduced into writing on 24th October, 2017. The said Consent Terms have been signed by the petitioner, Dr. Saveth Shetty and by the respondent, Dr. Jitesh Daba Shetty. In the context of the present petition, Clause-20 is material and is reproduced hereinunder :-

“20. The Petitioner on filing the present consent terms will co-operate to quash the FIR filed by her against the Respondent u/s. 324 of IPC by personally remaining present before the Hon'ble Bombay High Court and filing her affidavit of No Objection.”

3. Hence, the filing of the consent terms and the filing of the Affidavit by the respondent no.2 discloses that the parties have amicably settled their dispute as a result of which the respondent no.2 does not desire to proceed with the FIR, she has lodged with the Malad Police Station.

4. Respondent no.2 is personally present in the Court. She is identified by the Learned Counsel, Ms. Anita Dubey who is instructing the arguing Counsel, Mr. Gawade. She is also identified by her Aadhar Card bearing No. 7957 8895 5336. When put in the box and queried, she states that she and the respondent, Jitesh Shetty have arrived at Consent Terms in the Family Court. She further states that, the Affidavit annexed to the above petition at page-52 is hers and that she has understood the contents of the said Affidavit and that she has signed the said Affidavit of her own free will and volition.

5. The respondent, Dr. Jignesh Shetty is also personally present in the Court. He is identified by Learned Counsel, Ms. Rajani. He is also identified by his Aadhar Card bearing no.7284 9988 1447. When put in the box and queried, he accepts that, the parties have arrived at Consent Terms in the Family Court as a result of which the parties have amicably resolved their dispute.

As a consequence of the Consent Terms, that the respondent no.2 does not desire to proceed with the FIR. Hence, the reading of the Consent Terms, as well as, the Affidavit filed by the respondent no.2 and having regard to the statements made by the respondent no.2 and the petitioner when put in the box and queried, the same lead to a conclusion that the parties have amicably settled the matter and hence no useful purpose would be served by the police by further investigating into the FIR.

6. In view of the judgment of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in (2012) 10 SCC 303 would also lead to the same conclusion. No useful purpose would therefore be served by keeping the proceedings pending. The above Writ Petition is required to be allowed and is accordingly allowed and made

absolute in terms of prayer clause (B).

7. Both the Learned Counsel on instructions of their respective clients state that, their respective clients undertake to fulfill their mutual obligations in respect of the transfer of properties in question. Undertaking accepted.

8. The petitioner and the respondent no.2 to each deposit cost of Rs.25,000/- with the National Association of Blind, Worli totally amounting to Rs.50,000/- within six weeks from date. The receipts to be obtained and filed in the Registry.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)