

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 414 OF 2019

1. Shri Lalitkumar Ganesh Yadav

Age : 33 yrs., Occu:Service,

R/o. Near Sut Girani, Kupwad

Tal. Miraj Dist-Sangli

.. Petitioner

Versus

1. The State of Maharashtra

At the instance of

Akluj Police Station, Solapur

2. Sou. Minal Lalitkumar Yadav

Age : 31 yrs., Occ: Service,

R/o. Ramayan Chowk, Akluj

Tal. Malshiras, Dist-Solapur

.. Respondents

Mr. Samarth Morey I/b. Mr. S.R. Ghanavat for the Petitioner.

Mr. S.R. Phanse appointed advocate for Respondent No.2 through
Legal Aid Committee.

Mr. K.V. Saste, APP for State.

**CORAM : S.S.SHINDE &
M.S.KARNIK, JJ.**

**RESERVED ON : DECEMBER 15, 2020
PRONOUNCED ON : DECEMBER 17, 2020**

JUDGMENT : (PER M.S. KARNIK, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. By this Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 the Petitioner has prayed for the following reliefs :-

“a) This Hon’ble Court be pleased to issue a writ of certiorari or writ in the nature of certiorari and call for the record and proceedings of FIR No.0479 of 2018 registered with the Akuluj Police Station, Solapur, for offences punishable Sections 43 and 66 of the Information Technology Act, 2000 and after examining the legality, validity and propriety of the same, be pleased to exercise its inherent powers under Section 482 of the Code of Criminal Procedure, 1973 and quash and set aside the same.

a(i) This Hon’ble Court be pleased to issue a writ of certiorari or writ in the nature of certiorari and call for the record and proceedings of FIR No.0479 of 2018 registered with the Akaluj Police Station, Solapur, for offences punishable Sections 43(a)(b) and 66 of the Information Technology Act, 2000 now numbered as Summary Criminal Case No.1473 of 2019, pending on the file of the Ld. Civil Court Junior Division, Malshiras for offences punishable under Sections 43(a)(b) and 66 of the Information Technology Act, 2000 and quash and set aside the same, by consent of the Respondent No.2.

a(ii) This Hon’ble Court be pleased to exercise its inherent powers u/s 482 of the Code of Criminal Procedure, 1973 and be pleased to quash Charge-Sheet No.79 of 2019 registered at Akaluj Police Station,

Solapur for offences punishable under Sections 43(a)(b) and 66 of the Information Technology Act, 2000 by consent of the Respondent No.2.

3. The Petitioner-husband and the Respondent No.2-wife married on 11.02.2016. As a result of marital discord and on account of the misunderstanding the impugned FIR was filed by the Respondent No.2. This Petition is filed by the husband for quashing of the FIR. The parties have now arrived at a settlement. The Respondent No.2-wife filed an affidavit-in-reply setting out the terms of the settlement. In the affidavit-in-reply it is stated that in the light of the amicable settlement reached between the Petitioner and the Respondent No.2, she does not wish to proceed with the prosecution and therefore has no objection for quashing the FIR bearing C.R. No.0479 of 2018.

4. The Petitioner has agreed to abide by the terms of settlement as set out in the affidavit-in-reply. The Petitioner has also filed an affidavit of compliance cum undertaking duly affirmed on 04.12.2020. In the affidavit the Petitioner has stated that he has deleted all sound recordings, pictures, videos including screenshots of WhatsApp chats and that all the backups are now in the safe custody of the Respondent No.2. The Petitioner has undertaken not to act in any manner that will disturb the Respondent No.2's privacy or her data in any way. The undertaking is accepted.

5. We have interacted with the Respondent No.2. She reiterates what has been stated in the affidavit-in-reply filed on her behalf. She says that in view of the amicable settlement arrived at between the parties, she does not wish to proceed with the prosecution against the Petitioner. She further prays that the act of entering into the settlement is voluntary and there is no pressure on her.

6. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal

1 2012 (10) SCC 303

case despite full and complete settlement and compromise with the victim. It has also held inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

7. In the light of the settlement reached between the parties and interaction which we had with the Respondent No.2, we are satisfied that continuing the criminal prosecution will be an exercise in futility and as the Respondent No.2 is not going to depose against the Petitioner, the chances of conviction of the Petitioner are remote and bleak. In these circumstances, continuation of the prosecution would amount to abuse of the process of the Court. Hence, to secure the ends of justice, the Petition deserves to be allowed by quashing the FIR.

8. We appreciate the valuable assistance rendered by Shri S.R. Phanse who agreed to appear on behalf of Respondent No.2 at our request. We quantify his professional fees and expenses Rs.7500/-. Said amount shall be disbursed within four weeks from the date of receipt of order.

9. The Writ Petition is therefore allowed in terms of prayer clause (a), a(i) and a(ii).

10. Rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)