

Urmila Ingale

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

CRIMINAL APPLICATION NO. 238 OF 2020

1. Sajid Ismail Mansuri
Age 33 yrs. Occ : service

2. Memuna Ismail Mansuri
Age yrs. Occ : Housewife

3. Ashif Ismail Mansuri
Age yrs. Occ : Business

All residing at : 14/16, Kahzim Building,
Room No. 02, Mirza Ali Street,
Chinchbunder, Mumbai 400 009.

.... Applicants

Vs.

1. The State of Maharashtra
(At the instance of Sir J.J. Marg Police Station)

2. Alsamar Sajid Mansuri
Age 28 years, Occ. Housewife
Residing at : Room No. 103, First Floor,
Rafiya Building Chindhi Gali,
Bara Imam Road,
Mumbai 400 003.

..... Respondents

Mr.Satyaram R.Gaud, for the Applicants.
Ms.Shikhani Shah, for Respondent No.2.
Mr.S.R.Shinde, APP for the Respondent – State.
Mrs.Alsamar Sajid Mansuri – Respondent No.2 present in Court.

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

DATE : 07th DECEMBER, 2020

ORAL JUDGMENT (PER S.S. SHINDE, J.) :

. Rule. Rule made returnable forthwith and heard with the consent of learned Counsel appearing for the parties.

2. This Application takes an exception to the First Information Report bearing C.R. No.178 of 2019 registered with Sir J.J. Marg Police Station for the offences punishable under section 498(A) r/w section 34 of Indian Penal Code along with section 4 of Muslim Women (Protection of Rights On Marriage) Act, 2019, registered by 2nd respondent against the applicants.

3. Learned Counsel appearing for the applicants and 2nd respondent submit that the parties have amicably settled the dispute and 2nd respondent has filed an affidavit. It is submitted that since the entire controversy arose out of matrimonial discord and the parties have now amicably settled the dispute, this Court may quash the impugned FIR.

4. Learned APP appearing for the State submits that since FIR was filed by 2nd respondent making certain allegations against the applicants and entire controversy arose out of matrimonial discord, this Court may pass an appropriate order.

5. 2nd respondent is present before the Court. On a specific query to her, whether it is her voluntary act to enter into such settlement and pray for quashing FIR, she replied that it is her voluntary act to enter into such settlement and give consent for quashing the FIR i.e. C.R. No. 178 of 2019. 2nd respondent is identified by Advocate -Ms.Shikhani Shah appearing for her before this Court.

6. It would be appropriate to quote paragraphs 3 to 9 of the affidavit filed by 2nd respondent which read thus :

“3. I say that Applicant is my ex-husband, as we have executed Talaqnama on 04.02.2020 on ground of mutual understanding, due to intervention of our respective senior family and society members by giving a final end to the our matrimonial dispute. I say that we both are residing separately since last several years and Applicant No. 1 has performed his second marriage and residing with his second wife only.

4. I say that spousal discord arose between me and Applicants above-named have been settled amicably on the ground mutual separation, therefore now I am willing to settle my grievance with the Applicants by accepting the request made by the Applicants to withdraw my criminal complaint in form of C.R. No. 78 of 2019 registered with Sir J.J. Marg Police Station for an offence punishable u/s 498 (A) r/w 34 of IPC along with section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019. I further say that in view of above settlement I am hereby waiving my right of maintenance and there is nothing lying with the Applicants. However, Applicant No.1 (ex-husband) has agreed to give me the room premises where presently I am residing i.e. Room No. 103, 1st floor, Rafiya Manzil, Chindhi Galli, Aapaya Masjid, Null Baazar, Mumbai 400 003.

5. I say that in order to settle the dispute between me and Applicants now I am not willing to lead any evidence whether oral or documentary either before Police Machinery or before Court of Law in the present subject crime against any of the Applicants/Accused in view of amicably settled and thereby consenting to allow the prayer made in the quashing Application.

6. I hereby record my No-Objection for allowing the application preferred by the above-named Applicants thereby seeking prayer of quashing of subject FIR arising out is C.R. No. 78 of 2019 registered with Sir J.J. Marg Police Station for an offence punishable u/s 498(A) r/w 34 of IPC alongwith section of 4 Muslim Women (Protection of Rights on Marriage) Act, 2019.

7. I say that after withdrawal of the present subject matter, both the parties shall lead their respective lives as per their whims and desire and none of the parties shall interfere in the personal life of each other and none of them shall contact with each other in view of amicable dissolution of marriage.

8. I say that after quashing of the subject FIR, none of the parties would file any complaint/allegations/court proceeding either civil or criminal of whatsoever in nature against each other.

9. I say that I am giving my free consent for quashing of above referred subject FIR with my conscious mind, free will and without any sort of pressure, coercion, fraud applied on me by any person(s). Furthermore I am also aware about the effect of the present affidavit-in-reply, more specifically the subject FIR lodged at my behest would get quashed and all the above-named Applicants will not be prosecuted from such criminal proceeding, for which I am recording my free consent."

7. Since 2nd respondent does not wish to pursue the allegations in FIR, further continuation of the proceedings arising out of C.R. No.178 of 2018 lodged with Sir J.J. Marg Police Station dated 08.10.2019 for an offence punishable u/s 498A r/w 34 of IPC against the applicants would be an exercise in futility since chances of conviction of the applicants would be remote and

bleak. Further continuation of the investigation / proceedings arising out of aforesaid FIR would tantamount to abuse of the process of the Court.

8. 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 case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in

1 2012 (10) SCC 303

accord with the guidance engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

9. In the light of the discussion in the foregoing paragraphs, to secure the ends of the justice and to prevent the abuse of the process of the Court, the Application deserves to be allowed. Accordingly, Application is allowed in terms of prayer clause (b) which reads thus :

“(b) This Hon’ble Court may be pleased to quash and set aside First Information Report bearing its C.R. No. 178 of 2019 lodged with Sir J.J. Marg Police Station dated 08.10.2019 for an offence punishable u/s 498(A) r/w 34 of I.P.C. along with section 4 of Muslim Women (Protection of Rights on Marriage Act, 2019) dated 08.10.2019 against all the Applicants above named.”

10. Rule is made absolute in the above terms. Application stands disposed of accordingly.

11. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)