

Bhogale

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

CRIMINAL WRIT PETITION NO. 947 OF 2020

1. Ramkesh Sitaram Gupta
Age : 46, Occupation Business
Residing at Plot No.148
Room No.06, Nr. Ganesh Mandir
Kherwadi, Bandra (East),
Mumbai 400051

2. Vinay Ramkesh Gupta
Age : 22 Occupation Business
Residing at Plot No.148
Room No.06, Nr. Ganesh Mandir
Kherwadi, Bandra (East),
Mumbai 400051

3. Bipin Ramkesh Gupta
Age 23, Occupation Service
Residing at Plot No.148
Room No.06, Nr. Ganesh Mandir
Kherwadi, Bandra (East),
Mumbai 400051

.. Petitioners

V/s.

1. State of Maharashtra
Through Nirmal Nagar Police Station

2. Mrs. Celestine Felex Monteiro
Age 55 yrs, Occu.: Housewife
Res. Flat No.120,
Bld. No.3, Khernagar,
Bandra (East)
Mumbai 400051.

.. Respondents

Mr. R. S. Dwivedi for the Petitioners.

Mr. J.P. Yagnik, APP for the State.

Smt. Sunita Chidurala for Respondent No.2.

Mr. Ramkesh Gupta, Mr. Vinay R. Gupta and Mr. Bipin R. Gupta,
Petitioners are present.

Mrs. Celestine Felex Monteiro, Respondent No.2 is present.

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

DATE : DECEMBER 1, 2020

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

Rule. Rule made returnable forthwith with the consent of the parties and heard finally.

2. This Petition takes an exception to the filing of First Information Report ('FIR' for short) bearing CR No.9 of 2020 dated 10.01.2020 registered with Nirmal Nagar Police Station for the offences punishable under Sections 354, 323, 504, 506 r/w 34 of Indian Penal Code, 1860.

3. Learned counsel appearing for the Petitioners and Respondent No.2 jointly submit that the parties have amicably settled the dispute and to that effect Respondent No.2 has filed her affidavit. The affidavit of Respondent No.2 is tendered across bar. The same is taken on record. It is submitted that the alleged incident had taken place on account of misunderstanding and since the parties have amicably settled the dispute to maintain the cordial relations in future, the FIR may be quashed.

4. Respondent No.2 is present before this Court. On a specific query being put to her as to whether the settlement arrived at

between the Petitioners and herself is her own voluntary act without any coercion or pressure, she replied that it is her voluntary act to enter into such settlement, and therefore she prays for quashing the FIR.

5. We have heard learned counsel appearing for the Petitioners and learned APP appearing for Respondent No.1. With their able assistance, we have perused pleadings and grounds taken in the Petition along with annexures thereto and reply filed by the Respondent No.2. Respondent No.2 is identified by the Advocate appearing for her and the Petitioners are identified by the learned counsel appearing for them. All the accused in one voice have stated that henceforth they will not indulge in such alleged activities. In the light of the averments made in the affidavit filed by Respondent No.2 and oral undertaking given by the Petitioners, we are of the considered view that further continuation of the investigation/proceedings arising out of said CR No.9 of 2020 registered with Nirmal Nagar Police Station would be an exercise in futility and as such Respondent No.2 is not going to support the allegations in the FIR and chances of conviction of Petitioners would be remote and bleak. Though one of the offences alleged is punishable under Section 354 of the IPC, considering the alleged averments in the reply filed by the

Respondent No.2, we find it difficult to gather intention of the Petitioners so as to attract the ingredients of Section 354 of the IPC.

6. The Respondent No.2 in paragraph Nos.3 to 6 of the affidavit has stated thus :-

“3. I state and submit that with the intervention of the other society members, family members and friends, we have settled all the disputes with each other arose between me and Applicants herein.

4. I have no objection if the said FIR bearing No.09/2020 pending before the Nirmal Nagar Police Station is quashed.

5. I say and submit that I withdraw all allegations leveled as against the all accused/Applicants herein and further state that I have arrived at a compromise, in order to live in peace therefore, no useful purpose would be served by proceeding further with the said criminal case bearing C.R. No.09/2020 Nirmal Nagar Police Station Bandra (East), Mumbai.

6. I say that this Hon’ble Court in exercise of its inherent powers under section 482 of the Cr.P.C., 1973 can allow the compounding of non-compoundable offences. Therefore, in the facts and circumstances of the present case, the said FIR bearing C.R. No.09/2020 pending before the Nirmal Nagar Police Station at Bandra, Mumbai may be quashed.”

7. 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 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.

1 2012 (10) SCC 303

8. In the light of discussion in foregoing paragraphs to secure the ends of justice and to prevent abuse of the process of the Court and since Respondent No.2 has filed the affidavit stating therein in the said affidavit that she has no objection for quashing FIR in question, we are inclined to allow this Petition in terms of prayer clause (b) which reads thus :-

“b) This Hon’ble Court on satisfying itself as to the correctness and legality of the First Information Report “ANNEXURE-A” hereto be quashed and set aside the F.I.R. bearing C.R. No.09/2020 dated 10/01/2020 registered at Nirmal Nagar Police Station, Bandra (East), Mumbai.”

9. Accordingly the impugned FIR bearing CR No.9 of 2020 registered with Nirmal Nagar Police Station for the offences punishable under Sections 354, 323, 504, 506 r/w 34 of the Indian Penal Code is quashed and set aside.

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

11. Parties to act upon authenticated copy of this order.

12. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

Digitally
signed by
Diksha
Rane
Date:
2020.12.03
18:49:57
+0530

Diksha
Rane

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)