

Bhogale

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

CRIMINAL WRIT PETITION NO. 948 OF 2020

1. Mrs. Selestin Felex Mostero
Age 55 yrs, Occu.: Housewife
Res. Flat No.120,
Bld. No.3, Khernagar,
Bandra East, Mumbai 400051.

2. Mr. Shelton Felex Mostero
Age 20 years, Occupation : Student
Res. Flat No.120,
Bld. No.3, Khernagar,
Bandra East, Mumbai 400051.

.. Petitioners

V/s.

1. State of Maharashtra
Through Nirmal Nagar Police Station

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

.. Respondents

Mr. R.S. Dwivedi for the Petitioners.

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

Smt. Sunita R. Chidurala for Respondent No.2.

Mrs. Selestin Felex Mostero and Mr. Shelton Felex Mostero,
Petitioners are present.

Mr. Vinay Ramkesh Gupta, 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.10 of 2020 dated 10.01.2020 registered with Nirmal Nagar Police Station for the offences punishable under Sections 324, 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 his affidavit stating therein that he has no objection to quash the FIR.

4. Respondent No.2 is present. On specific query to him he states that in view of the compromise he is not interested to pursue the allegations in the FIR bearing CR No.10 of 2020.

5. Since the affidavit is filed by the Respondent No.2 stating that in view of the amicable settlement arrived at between the parties he has no objection for quashing the FIR. In the light of

the averments in the affidavit filed by the 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.10 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.

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.10/2020 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.10/2020 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.10/2020 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

1 2012 (10) SCC 303

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.

8. In that view of the matter, to secure the ends of justice and to prevent abuse of the process of the Court, we are inclined to allow the 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-B” hereto be quashed and set aside the F.I.R. bearing C.R. No.10/2020 dated 10/01/2020 registered at Nirmal Nagar Police Station, Bandra (East), Mumbai.”

9. Accordingly, the impugned FIR bearing CR No.10 of 2020 registered with Nirmal Nagar Police Station for the offences punishable under Sections 324, 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.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

Diksha
Rane

Digitally
signed by
Diksha
Rane
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