

Bhogale

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

CRIMINAL WRIT PETITION NO. 1129 OF 2020

1. Sagar Shahaji Kadam

Age:28 years, Occ:Service,

2. Shahaji Kakasaheb Kadam

Age:55 years, Occ:Service,

Both r/o. Flat No.302, Plot No.13/14

Indraprastha Society, Sector 29,

Vashi, Navi Mumbai

.. Petitioners

vs.

1. The State of Maharashtra

Through Senior Police Inspector

Vashi Police Station, Navi Mumbai

(C.R. No.I-205 of 2019)

2. Rupali Sagar Kadam

(Nee Name Rupali Tanaji Khandare

Age:28 years, Occ:Household,

R/o. G-301, Minal Park, C.S. Road,

Near Petrol Pump, Dahisar (E),

Mumbai - 400 068.

.. Respondents

Mr. Mahindra Deshmukh for the Petitioners.

Mrs. Vishaki Bhatia for Respondent No.2.

Dr. F.R. Shaikh, APP for the State.

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

DATE : DECEMBER 21, 2020

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

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

2. Heard the learned counsel appearing for the Petitioners and learned counsel appearing for Respondent No.2. They jointly submitted that the Petitioners and Respondent No.2 have amicably settled the dispute. It is submitted that before the Family Court at Thane, Petitioner No.1 has instituted proceedings for divorce and said proceedings with the consent of the Respondent No.2 have been converted into proceedings for Divorce by mutual consent.

3. Learned counsel appearing for the Petitioners submits that as a part of consent terms, Petitioner No.1 has paid Rs.20 lakhs to the Respondent No.2. Remaining agreed amount of Rs.5 lakhs in addition to Rs.20 lakhs will be paid to the Respondent No.2 at the time of passing the decree of divorce. Relying upon the undertaking submitted today across the bar, learned counsel for

the Petitioners submits that the present Petitioners will attend all the dates before the Family Court at Thane in Marriage Petition No.A-22 of 2020 which is pending for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. He further invites our attention to the Paragraph 2 of the said affidavit and submits that the Petitioner No.1 will fully participate in the said proceeding and also abide by the condition of payment of Rs.5 Lakhs to the Respondent No.2 on the day of passing decree of divorce by mutual consent before the Family Court, Thane in the aforesaid proceeding.

4. Learned counsel appearing for the Respondent No.2 is satisfied with the undertaking given by the Petitioners. She submits that the Petitioners shall strictly abide by the said undertaking and also the consent terms which are placed on record before the Family Court at Thane.

5. Respondent No.2 has filed the affidavit-in-reply. The Respondent No.2 in paragraph Nos.2 to 7 of the affidavit has stated thus :-

“2. I say that I had Lodged FIR under Section 498A against the Petitioners on 22nd June, 2019 and other proceedings before the Family Court and the Petitioners had filed divorce petition against me. Pending all the

proceedings before the various Courts, we decided to part the ways amicably and secure the divorce by mutual consent. Thus, in the above circumstances since it is now been decided between us to mutually get divorced I have no objection if the aforesaid FIR bearing C.R. No.I-205 of 2019 registered with Vashi Police Station and consequent Regular Criminal Case No.1409 of 2019 pending before the Ld. JMFC at Vashi, CBD Belaur, Navi Mumbai is quashed and set aside by this Hon'ble Court. As we have decided to part the ways amicably and secure the divorce by mutual consent and thus I am filing this present Reply by way of Affidavit without any force and coercion and with my free will and consent.

3. I say that as the settlement is arrived amicably by way of permanent alimony an amount of Rs.25 lakhs will be paid to me by demand drafts at various stages of the proceedings.

i) Rs.10 lakhs will be paid by the demand draft on 27th Feb. 2020.

ii) Rs.5 lakhs will be paid by the demand draft on 21 March 2020 and there after Petition No.E/233/2019 and Petition No.A 2090 of 2019 will be withdrawn in Bandra Court.

iii) Rs.5 lakhs by demand draft will be paid at the time of converting the Marriage Petition No.22 of 2020 for divorce by mutual consent. And Remaining of Rs.5 lakhs will be paid by demand draft on the date of the order Mutual Consent Divorce.

4. I say that as we have decided to put an end to relationship and to live happily with our respective families, I agreed to bring end all the litigation pending against each other. Therefore, in the above circumstances I have no objections if the Hon'ble Court pass the order for quashing of FIR and Criminal proceeding against Petitioners.

5. I say that now our relations are normal and we are residing at our respective address without any quarrel and peacefully with our respective families. I therefore do not wish to pursue any litigation filed by me against the Petitioner.

6. I say that I am filing this reply to give my consent and no objection if the FIR and Criminal Proceedings is quashed by this Hon'ble Court against the Petitioners. I say that I am filing this Affidavit without any force or coercion and upon my own will and wish.

7. I say that in circumstances mentioned above and in view of peace full settlement agreed upon for the mutual consent divorce, I withdraw all my allegation against the Petitioners and I hereby do not have any objection if the said FIR is quashed and set aside and prayers prayed by the Petitioners in the present Petition are granted by this Hon'ble Court."

6. Respondent No.2 is present before this Court. On specific query to her as to whether the consent terms arrived at between

the Petitioner No.1 and herself are her voluntary act without any coercion, her reply was in the affirmative. She stated that she has no objection for quashing of the FIR bearing C.R. No.I-205 of 2019 registered on 22.06.2019 with Vashi Police Station, Navi Mumbai for the offences punishable under Sections 498A, 504, 506 of the Indian Penal Code ('IPC' for short). She stated that the Petitioner No.2 shall strictly abide by the consent terms and the undertaking given before this Court.

7. We have considered the submissions of learned counsel appearing for the Petitioners and the learned counsel appearing for Respondent No.2. With their able assistance, carefully perused the pleadings in the Petition, grounds taken therein and annexures thereto. In view of the reply filed by the Respondent No.2 and undertaking given today by the Petitioners, we are of the considered view that no fruitful purpose will be served by continuing the proceedings arising out of FIR bearing C.R. No.I-205 of 2019. Further, continuation of the proceedings of Regular Criminal Case No.1409 of 2019 pending before the J.M.F.C., Vashi at CBD Belapur, Navi Mumbai arising out of C.R. No.I-205 of 2019 mentioned hereinabove would be an exercise in futility since Respondent No.2 is not going to support the prosecution case and chances of conviction of the Petitioners would be remote and bleak.

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 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.

9. In the light of discussion in foregoing paragraphs to secure the ends of justice and to prevent abuse of the process of the

1 2012 (10) SCC 303

Court and since Respondent No.2 has filed the affidavit-in-reply stating therein in the said affidavit that she has no objection for quashing the FIR in question, we are inclined to allow this Petition in terms of prayer clause (a) which reads thus :-

“a) That this Hon’ble Court may be pleased to call for records and proceedings pertaining to C.R. No.I-205 of 2019 registered with Vashi Police Station, Navi Mumbai u/s. 498A, 504, 506 of the I.P.C. and after examining its legality, validity and correctness of the same this Hon’ble Court may be pleased to quash and set aside the same and further be pleased to quash and set aside the same and further be pleased to quash the Criminal Proceeding registered at Regular Criminal Case No.1409 of 2019 pending before JMFC, Vashi, CBD Belapur, Navi Mumbai.”

10. The parties shall strictly abide by the consent terms and affidavit given by the Petitioners so also averments made by the Respondent No.2 in her affidavit-in-reply.

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

12. This judgment 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 judgment.

Diksha
Rane
Digitally
signed by
Diksha Rane
Date:
2020.12.22
19:11:51
+0530

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)