

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

CRIMINAL WRIT PETITION NO.1460 OF 2020

Sanket Satish Naik

... Petitioner

Vs

1. The State of Maharashtra
2. Mrs.Neha Naik

... Respondents

Mr.Apoorv Singh with Mr.J.K. Shah i/b R.J. Law for the Petitioner
Mr.J.P. Yagnik, APP, for Respondent – State
Mr.K.P. Shah for Respondent No.2
Respondent No.2 – present

**CORAM: S.S. SHINDE &
S.P. TAVADE, JJ.**

DATED: JULY 23, 2020

ORAL JUDGMENT (Per S.S. Shinde, J.):

1. Rule. Rule made returnable forthwith, with the consent of the learned Counsel for the parties.
2. This petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure with the following substantive prayers:

“(a) This Hon’ble Court be pleased to call for the records of the investigations carried out in pursuance of the registration

of F.I.R. No.281 of 2019 dated 18th July, 2019 by Amboli Police Station, Mumbai;

(b) This Hon'ble Court may be pleased to quash and set aside the F.I.R. No.281 of 2019 dated 18th July, 2019 registered u/s 304, 336, 323, 504 of IPC with Amboli Police Station, Mumbai;"

3. Pursuant to the notices issued to the respondents, respondent No.2 has filed an affidavit.

4. Learned Counsel appearing for the petitioner and Respondent No.2 jointly submit that the parties have amicably settled the dispute and to that effect, Respondent No.2 has filed an affidavit. Respondent No.2 in her affidavit has stated that the FIR was lodged against the petitioner due to some misunderstanding and in fact, the petitioner has no role to play in the death of her father. Therefore, she has no objection to quash the FIR.

5. We have interacted with Respondent No.2. She stated that the averments in the affidavit are true and the same are voluntarily made to enter into a settlement and resolve the dispute. She has stated that the said affidavit is filed without any coercion and with free will. It would be apt to reproduce hereinbelow paragraphs 5 to 10 of the said affidavit, which read as under:

“5. I say that on 18th July 2019 around 10.30 a.m. there was dispute going on between me and my husband/petitioner and at the same time I called my father and he came there after some time. At that time Petitioner started abusing my father and started recording. My father sat on the sofa. Thereafter my father got up from sofa and took few steps and felt giddy and fell down and therefore I with the help of one Mr. Kartik took him to Kokilaben Hospital, Andheri, Mumbai, where he was declared dead.

6. I say that on the same day I approached Amboli police station to lodge complaint against the petitioner and the FIR came to be registered against him i.e. FIR no:-281 of 2019 u/s 304, 336, 323, 504 of IPC.

7. I say that after few days I realized that the said FIR was due to state of mind and my being emotional towards my father's death. I say that the same was due to deep shock of losing my father and I inadvertently stated that Petitioner pushed my father. I say that on 6th September 2019 I have given a letter to the Amboli Police stating the recording the same.

8. I say that my statement given in the FIR was under influence of deep shock and state of mind which I realised later on and I was not having any intention to cause harassment to the Petitioner. I say that now there is no dispute between me and the Petitioner and I do not have any grievance against him. I do not have any objection if the FIR lodged against the Petitioner at my behest be quashed and set aside by this Hon'ble Court.

9. I repeat, reiterate and confirm that I have amicably settled all disputes with the Petitioner and I have no grievance whatsoever against the Petitioner. I further state that I do not want to proceed against the Petitioner for the alleged offences or allegations mentioned in the said FIR, or in any relation thereto. Further, I do not want to lead any evidence against the Petitioner and I do not wish to pursue

the present FIR.

10. I, therefore, give my irrevocable consent and no objection, for quashing and/or setting aside of the said FIR, being FIR No.281 of 2018 dated 18th July 2019 registered with Amboli Police Station Mumbai for offences punishable under Sections 304, 336, 323, 504 of IPC against the Petitioner.”

6. Since the petitioner and Respondent No.2 have amicably settled the dispute, there is no reason to continue the proceedings arising out of the aforesaid FIR No.281 of 2019. Upon a careful perusal of the averments in the affidavit, it is abundantly clear that the ingredients of section 304 of the Indian Penal Code are not attracted and, therefore, the alleged offence is not disclosed under section 304 of the Indian Penal Code. Respondent No.2 has stated that out of misunderstanding and due to the death of her father, she became emotional and she filed the FIR against the petitioner. However, the allegations in the FIR that the petitioner pushed the father of the respondent and as a result, the father of Respondent No.2 died, are not true.

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

¹ 2012 (10) SCC 303

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 accordance 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.

8. Keeping in view the exposition of the Supreme Court in the case of ***Giansingh (supra)***, we are of the opinion that the petition deserves to be allowed to secure the ends of justice to prevent

abuse of the process of law. In the light of the discussion in the foregoing paragraphs, the petition succeeds. It is allowed in terms of prayer clauses (a) and (b).

9. Rule made absolute in the above terms.

10. Writ Petition stands disposed off accordingly.

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

(S.P. TAVADE, J.)

(S.S. SHINDE, J.)

Vishwanath
S. Sherla

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signed by
Vishwanath
S. Sherla
Date:
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