

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

CRIMINAL APPLICATION STAMP NO. 2131 OF 2020

Vishal Kishor Nihalani

Age: ___ Years, Occ-Service,

Residing at- C/o- Poonam Nihalani,

Building no. 23, Sea View,

Apartment, Flat no. 21, Bandra,

Reclamation, Bandra (West),

Mumbai- 400050.

...**APPLICANT**

Versus

1. The State of Maharashtra
(Through Saki Naka Police Station)

2. Harsha Nihalani
Age- ___ years, Occ- Service,
Residing at C/o. Samarpan, C-Wing,
802, Off Western express highway,
Borivali, East,
Mumbai- 400066.

...**RESPONDENTS**

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Mr. Sanjeev Kadam i/b. Mr. M.B. Shirsat for Applicant.

Mr. Vinog Singh, Advocate for Respondent No. 2.

Smt. A.S. Pai, APP for Respondent-State.

Ms. Harsha Nihalani, Respondent No. 2- present through video conferencing.

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

DATE : NOVEMBER 06, 2020.

P.C:

1. 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 FIR No. 849 of 2018 registered by the Sakinaka Police Station and the case No. 542/PW/2020 pending before the Ld. Metropolitan Magistrate 66th Court at Andheri, Mumbai.

3. Learned counsel appearing for the applicant and Respondent No. 2 jointly submitted that they have amicably settled the dispute and to that effect consent terms are placed on record. Learned counsel appearing for Respondent No. 2 invites our attention to the affidavit filed by Respondent No. 2.

4. The Respondent No. 2 is present. The parties are identified by their respective advocates. We have interacted with Respondent No. 2 through video conferencing. She stated that it is her voluntary act to enter into the consent terms and she has no objection for quashing the FIR.

5. We have considered the submission of learned counsel appearing for the Parties. We have carefully perused the affidavit filed by Respondent No. 2. The Respondent No. 2 stated that it is her voluntary act to enter into the settlement. In that view of the matter, there is no reason for continuing the investigation/proceedings arising out of FIR No. 849 of 2018 registered by the Sakinaka Police Station and continuation of said would be an exercise in futility and abuse of the process of the Court.

6. Keeping in view the averments in the affidavit and statement made before this Court by Respondent No. 2, the Respondent No. 2 is not going to support the allegations in the FIR and chances of conviction of the applicant would be bleak.

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 is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to

1 2012 (10) SCC 303

prevent abuse of the process of any court.

8. In the light of discussion made herein above, to secure the ends of justice and prevent the abuse of the process of the Court, the application deserves to be allowed. The application is allowed in terms of prayer clause (a), which reads as under:-

(a) This Hon'ble Court be please to quash the FIR No. 849/2018 registered by the Sakinaka Police Station and the case No. 542/PW/2020 pending before the Ld. Metropolitan Magistrates 66th Court at Andheri, Mumbai.

9. The Applicant and Respondent No. 2 shall strictly abide by the consent terms which are placed on record.

10. 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.

(M. S. KARNIK, J.)

(S. S. SHINDE, J.)