

Urmila Ingale

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

CRIMINAL WRIT PETITION NO. 2397 OF 2019

Smt.Reena Ishaan Jain
alias Reena Mahendrabhai Jain,
aged 29 years, Occ. Housewife,
residing at Flat No.1001,
Amizara Apartment, Mankanji,
Park, Aadajan Road, Surat,
Gujarat 395009

....Petitioner

Vs.

1. State of Maharashtra
(through Sr.P.I.Byculla
Police Station, Mumbai)

2. Shri Ishaan Rajendra Jain
Hindu, Indian Inhabitant,
Age 27 Yrs,
Occupation - Businessman,
residing at 1103/A, Sumer
Tower, Seth Mothisha Lane,
Mazgaon, Mumbai 400 016.

..... Respondents

Mr.Kunal Dalal a/w Mr.Filji Fredorick a/w Mr.Ali Kazmi i/b FF &
Associates, for the Petitioner.
Mrs.Megha Rane, for Respondent No.2.
Mrs.S.D.Shinde, APP for the Respondent - State.
Mr.Ishaan R.Jain - Respondent No.2 present through VC.

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

DATE : 27th NOVEMBER, 2020

ORAL JUDGMENT (PER M.S.KARNIK, J.) :

. Rule. Rule made returnable forthwith and heard with the consent of learned Counsel appearing for the parties.

2. Heard learned Counsel for the petitioner, learned Counsel for the respondent and learned APP.

3. This Petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 for quashing of C.C. No. 497 of 2019 pending before the Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai in C.R. No. 47 of 2018 registered at Byculla Police Station on 19/02/2018 against the petitioner for an offence punishable under sections 419 & 426 of the Indian Penal Code and section 66, 66(c) of the Information Technology Act 2000. The petitioner is the wife of respondent No.2. The marriage was solemnized on 29/04/2013. There was marital discord between the parties as a result of which they filed several complaints against each other and even proceedings for divorce are pending before the competent court.

4. The parties have with the intervention of the elder

members in the family decided to resolve the dispute. Accordingly, an affidavit has been filed by respondent No.2 in this Court that he does not wish to proceed with the complaint as he has settled the dispute with his wife – the petitioner herein. He further consented for quashing of the said criminal complaint.

5. We have interacted with respondent No.2 through video conferencing. He says that an affidavit has been duly filed by him in this Court consenting for quashing of the said complaint. He is identified by his Advocate. He says that the said consent for quashing is a voluntary act on his part and that he is not under any pressure or coercion. He further says that since it is a matrimonial dispute, parties have decided to settle the matter between themselves.

6. Considering the law laid down by the Apex Court in the case of **Giansingh Vs. State of Punjab and anr. 2012(10) SCC 303**, we find that this is a fit case for quashing as the criminal complaint arises out of the matrimonial dispute. The offence registered cannot be regarded as a serious and heinous so as to refuse quashing of the criminal prosecution. In the light of the affidavit filed by respondent No.2 and having interacted

with respondent No.2, we find that the respondent No.2 is not going to depose against the petitioner in the pending criminal complaint and therefore the chances of conviction is bleak and remote.

7. In our opinion, having regard to the facts of the present case, continuation of the criminal proceedings would be an exercise of futility and will be prejudicial to the parties. We therefore find this is a fit case for quashing of the proceedings by consent of the parties to prevent the abuse of the process of the Court. The Petition is therefore allowed in terms of prayer clause (b) which reads thus :

“Your Lordship be pleased to issue appropriate writ, directions, order against the respondents and to quash and set aside the FIR bearing 47/2018 registered at Byculla Police Station, Dist : Mumbai on 19/02/2018 against the present Petitioner for an offence punishable under section 419, 426 of the Indian Penal Code and section 66, 66(c) of the Information Technology Act 2000 and the charge-sheet filed in the month of April 2019 C.C. No. 497 of 2019 pending before learned Metropolitan Magistrate 25th Court, Mazgaon, Mumbai.”

8. The Petition stands disposed of. Rule is made absolute in the above terms.

9. This order will be digitally signed by the Private Secretary 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.)

Urmila
P. Ingle

Digitally signed
by Urmila P.
Ingle
Date: 2020.12.01
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