Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 638 OF 2019

1. Saif Ali Gulani
Age 30 years, Occ: Service
Residing at Flat No.1201, Building No. 88A,
Road No. 12, Tilak Nagar, Chembur (E),
Mumbai 400 089.

2. Sabbir Hussein Gulani
Age 63 years, Occ. Retired (Govt. Employee)
Residing at Flat No. 1201, Building No. 88A,
Road No. 12, Tilak Nagar, Chembur (E),
Mumbai 400 089.

3. Zainab Sabbir Gulani
Age 53 years,
Residing at Flat No. 1201, Building No. 88A,
Road No. 12, Tilak Nagar, Chembur (E),
Mumbai 400 089. .... Applicants

Vs.

1. The State of Maharashtra
(At the instance of Pydhonie Police Station
In their Cr.No.67 of 2017)

2. Shifa Yousuf Bijal
Aged 25 years,
Residing at 43/47, Ibrahim Merchant Road,
City Heights, Flat No. 2204, 22nd floor,
Khad Dongri, Mumbai 400 009. ..... Respondents

ALONG WITH
CRIMINAL WRIT PETITION NO. 876 OF 2020

1. Mohammed Nabil Yusuf Bijal
Age : 30 years, Occ. Service

r/o. residing at 44/47, Ebrahim Merchant
Road, City Heights Building,
Room No. 2203 and 2204, 22nd floor,
Khadak, Dongri, Mumbai 400 009.

2. Mohammed Hammad Yusuf Bijal
aged 24 years, Occ: Service
r/o. residing at 44/47, Ebrahim Merchant
Road, City Heights Building,
Room No. 2203 and 2204, 22nd floor,
Khadak, Dongri, Mumbai 400 009.

3. Mohammed Faizan Rafique Patni
aged 30 years, Occ: Service
residing at Room No. 24, 4th floor,
Gulshan Amar Housing Society,
4th Tunda Street, Khadak,
Dongri, Mumbai 400 009 .. Petitioners

Vs.

The State of Maharashtra
Through Tilak Nagar Police Station
in C.R.No. 248/16 dated 02.08.2016 .. Respondent

Mr.Akash Kavade, for the Applicants in CRI/APLST/638/2019 & IN I.A. No. 1077 of 2020.
Mr.M.A.Ansari, for Petitioner in WP/876/2020 & for Respondent No.2 in APL/638/2020.
Mr.Deepak Thakare, PP a/w Mr.V.B. Konde-Deshmukh, APP for the Respondent – State.
Mrs.Shifa Yousuf Bijal- Respondent No.2 present in Court.

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

RESERVED ON : 14th DECEMBER, 2020
PRONOUNCED ON : 17th DECEMBER, 2020

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

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

Status of the parties in Writ Petition No.876 of 2020 and reliefs sought :

2. The petitioners No.1 & 2 are the brothers of Shifa Yusuf Bijal who is respondent No.2 in Criminal Application No. 638 of 2019. The petitioner No.3 is the friend of Shifa. The Petition is filed for quashing FIR No. 248 of 2016 dated 02/08/2016 filed against the petitioners under sections 323, 324, 504, 506(2), 341, 427 r/w 34 of IPC 1860 registered with the Tilak Nagar Police Station, Mumbai. Shifa's husband – Saif Ali is the complainant.

Status of parties in Criminal Application No.638 of 2019 & reliefs sought :

3. The application is filed for quashing of criminal proceedings bearing Case No. 142/PW/2018 pending before the Metropolitan Magistrate, 2nd Court at Mazgaon arising out of C.R.No. 67 of 2017 registered with Pydhonie Police Station for the offences punishable under sections 498(A), 406, 323, 504 and 506 of IPC as well as under section 4 of Dowry Prohibition Act

lodged by respondent No.2 Shifa against her husband the petitioner.

4. The aforesaid Criminal Application and Writ Petition arise out of matrimonial dispute between the husband Saif Ali and wife Shifa Bijal.

The Criminal Application and Writ Petition are being disposed of by a common order as they arise from cross complaints filed by the husband and wife and the family members against each other.

5. During the pendency of the proceedings, the husband and wife filed the consent terms dated 24/01/2020 before the Family Court at Bandra. It was mutually agreed to put an end to the criminal litigation filed against each other and family members in view of the terms and conditions set out in the consent terms dated 24/01/2020. The said consent terms are placed on record in Criminal Application No. 1077 of 2020 filed in Criminal Application No.638 of 2019. The parties were agreed to abide by the terms and conditions set out in the consent terms.

6. We have gone through the consent terms. Learned Counsel for the respective parties submit that the issue between them has been resolved. They no longer want to pursue the criminal cases filed against each other. We have interacted with Shifa as well as Saif who are present in the Court today. Both of them say that the matter has been amicably resolved and consent terms have been filed in the Family Court at Bandra. They say that they would abide by what is stated in the consent terms and the request is made for quashing of FIR. Statements accepted.

7. We are satisfied that there is no pressure on the parties to enter into the compromise and consent for quashing is a voluntary act on their part and out of their own free will. The dispute having arisen as a result of matrimonial discord, no useful purpose would be served by continuing the criminal prosecution. The continuation of the criminal prosecution would be an exercise in futility & as the parties are not going to depose against each other, we are satisfied that the chances of conviction are very 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 resolves 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 guidance engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

9. Thus, continuation of the criminal proceedings would tantamount to abuse of the process of the Court and therefore to

1 2012 (10) SCC 303

secure the ends of justice, this is a fit case for allowing the Application and Petition for quashing. Hence, the following order.

O R D E R

(i) Criminal Application No. 638 of 2019 is allowed in terms of prayer clause (A) which reads thus:

> "(A) Quash the Criminal Proceedings bearing Case No. 142/PW/ 2018 pending before the Hon'ble Metropolitan Magistrate 2nd Court at Mazgaon, Mumbai arising out of C.R. No. 67/2017 registered with the Pydhonie Police Station."

(ii) Writ Petition No. 876 of 2020 is allowed in terms of prayer clauses (b) & (c) which reads thus :

> "(b) That this Hon'ble Court may be pleased to issue suitable writ, order or direction, thereby quashing and setting aside the FIR bearing number 248/2016 dated 02.08.2016, punishable under section 323, 324, 504, 506(2), 341, 427 r/w 34 of the Indian Penal Code; registered with the Tilak Nagar police station, Mumbai against the accused.
>
> (c) That this Hon'ble Court may be pleased to also quash and set aside C.C.No. 1043/PW/2016 pending before the 72nd Metropolitan Magistrate Court at Vikhroli, Mumbai arising from the same FIR. "

10. Rule is made absolute in the above terms.

11. 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: 2020.12.17 12:52:42 +0530