

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3115 OF 2018

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| 1. Abasaheb Shamrao Jadhav |] | |
| 2. Popat Shamrao Jadhav |] | |
| both R/at, Kumbhari, Kosari, |] | |
| Taluka Jat, Dist. Sangli. |] | |
| 3. Siddhnath Nivruti Mane, |] | |
| 4. Mahadev Nivruti Mane, |] | |
| both R/at, Shegao, Taluka: Jat, |] | |
| Dist. Sangli. |] | |
| 5. Prabhakar Jadhav, |] | |
| R/at Kumbhari, Taluka, Jat. Dist. |] | |
| Sangli. |] | ... Petitioners |

Versus

- | | | |
|----------------------------------|---|-----------------|
| 1. The State of Maharashtra |] | |
| (Through Senior Inspector of |] | |
| Hupari Police Station, Dist. |] | |
| Kolhapur). |] | |
| 2. Rajshree Amol Shinde, |] | |
| R/at: Dr. Rohidas Misal, |] | |
| Bridevnagar, Rendal Hatkanagale, |] | |
| Hupari, Dist. Kolhapur. |] | ... Respondents |

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Mr. Kuldeep S. Patil for the petitioners.

Ms. S.D. Shinde, A.P.P. for respondent-State.

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Ms. Heena Suvarnakar i/b Mr. Gajanan M. Savagave for respondent No.2.

Respondent No.2 is present in court.

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CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 03RD MARCH, 2021

PRONOUNCED ON : 10TH MARCH, 2021.

JUDGMENT :- [Per: Manish Pitale, J.]

1. Rule. Rule made returnable forthwith. With the consent of the rival parties, heard finally.

2. By this writ petition, the petitioners have prayed for quashing of First Information Report (“FIR”) bearing No. 130 of 2017 dated 23/10/2017 registered at Hupari Police Station, Dist. Kolhapur, whereby offence under Section 365 read with Section 34 of the Indian Penal Code (“IPC”) was registered against them.

3. The documents filed along with the petition show that there was a civil suit filed against the husband of respondent No.2 (original complainant) by the son of petitioner No.1 claiming specific amount due from the husband of respondent No.2

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towards silver leg chain supplied by the proprietorship of the son of petitioner No.1. The said suit for recovery of money was filed in the context of the business transaction between the parties.

4. According to respondent No.2, the petitioners had visited her house and called upon her husband to pay money for the silver purchased from them. It was alleged that they forcibly took away the husband of respondent No.2, while demanding money from them.

5. On 11/02/2019, this court issued notice in the present petition, as it was claimed by the petitioners that the dispute was essentially of a civil nature, pertaining to recovery of money and that the FIR deserved to be quashed. While issuing notice, this court directed that the charge-sheet would not be filed in the meanwhile.

6. When this petition was taken up for hearing, respondent No.2 appeared through counsel and she was also personally present. It was submitted on behalf of respondent No.2 that the dispute between the parties have now been settled and respondent No.2 does not wish to pursue the matter any more. An affidavit in reply of respondent No.2 was tendered in the court, which was taken on record. The relevant portion of the said affidavit reads as follows:

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“2. I say that the dispute between me and the petitioners have been settled amicably. I say that the said FIR lodged against the petitioners was an outcome of a misunderstanding which had taken place between us due to some business transaction. Owing to the said business transaction, a suit bearing O.S. No.63/2018 was filed in the Ld. Addl. District Court, Salem for recovery of money. The said suit filed for recovery of money is settled amicably in the mediation as per the settlement agreement dtd. 24/01/2020. Considering the settlement agreement, judgment and order dtd. 29th January 2020 is passed in O.S. No.63/2018 wherein it is mentioned that the matter is settled with the petitioners. I have annexed a copy of the said judgement and order dtd. 29/01/2020 alongwith this affidavit.

3. I say that I do not have any grievance against the present petitioners. In view of the aforesaid I have decided not to pursue the present criminal proceedings/prosecution against the present petitioners. I therefore have no objection for quashing of F.I.R. and quashing of criminal case arising out of F.I.R. bearing C.R. No.130 of 2017 registered with Hupari Police Station, Dist. Kolhapur.

4. I am aware that, the present petition is filed for quashing of the F.I.R. bearing C.R. No.130/2017 registered with Hupari Police Station, Dist. Kolhapur and all the proceeding arising out of said C.R. I say that, I do not want to pursue the said F.I.R. and the criminal case arising out from the said F.I.R. against the petitioner and I have no objection if the present petition is allowed and the above

referred F.I.R. bearing C.R. No.130/2017 registered with Hupari Police Station, Dist. Kolhapur and the Criminal Case arising from the said F.I.R. is quashed and set aside against the present petitioner.

5. I am filing this affidavit on my own free will without any fear or pressure or undue influence. Considering the fact that I have resolved the disputes with the Petitioners, I consent for allowing this petition as prayed by the petitioner.”

7. An affidavit of the alleged victim i.e. husband of respondent No.2 was also tendered, which confirmed the fact that the parties had amicably settled the dispute and that, on the basis of such settlement, the suit filed for recovery was disposed of. Copy of the settlement agreement arrived at between the parties was also placed on record.

8. We interacted with respondent No.2, who was present in the court and she reiterated the fact that the dispute between the parties have been settled. It was further submitted that the dispute itself and the FIR, which stood lodged against the petitioner was the result of a misunderstanding in the business transaction. On this basis, it was submitted that she had given her consent for allowing the present writ petition and that such consent had been given by her own free will, without any coercion.

9. The Supreme Court in the case of *Gian Singh v. State of*
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Punjab & Anr.¹ has held that the criminal cases having overwhelmingly and predominately 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 offences 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 that 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.

10. In view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment, we are of the opinion that the present writ petition deserves to be allowed on the basis of the settlement arrived at between the parties. It appears from the material that has come on record that the dispute was

¹ (2012) 10 SCC 303

essentially of a commercial nature arising from some business transaction and a misunderstanding has led to lodging of FIR. It is evident that respondent No.2 will not be pursuing the matter and that she will not be supporting the allegations made in the FIR. Therefore, further proceedings would be of no consequence.

11. Since the investigation undertaken pursuant to the said FIR led to filing of the charge-sheet and criminal case bearing R.C.C. No.326 of 2018 is pending before the Court of Judicial Magistrate, First Class at Ichalkaranji, Dist. Kolhapur, not only the FIR but the aforesaid case also deserves to be quashed.

12. In view of the above, the writ petition is allowed and the FIR bearing No.130 of 2017 registered at Hupari Police Station, Dist. Kolhapur as also R.C.C. No.326 of 2018 pending before the Judicial Magistrate, First Class at Ichalkaranji, Dist. Kolhapur, are quashed, in the interest of justice.

13. Rule made absolute in above terms. The writ petition is disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)