

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.8 OF 2021

1]	Arjun Debashis Mukherjee	]
	Age : 35 years, Occ : Service	]
		]
2]	Debashish Mukherjee,	]
	Age : 65 years, Occ : Retired.	]
		]
3]	Madhu Debashish Mukherjee	]
	Age : 62 years, Occ : Housewife	]
		]
	All residing at Flat No.702,	]
	Kamla Arcade Building, Plot Nos. 3 and 4	]
	Sector 30 Rabale, Navi Mumbai – 400 701	]
		]..... Petitioners.

versus

1]	State of Maharashtra	]
	Through the Senior Inspector of Police,	]
	Kasturba Gandhi Marg Police Station,	]
	Kasturba Cross Road No.1, Chinchpada	]
	Borivali (East), Mumbai – 400 066	]
	Served through the Public Prosecutor,	]
	Bombay High Court, Mumbai	]
		]
2]	Maitreyee Chakravarty	]
	@ Maitreyee Mukherjee	]
	d/o Pranab Chakravarty w/o 1 st Petitioner	]
	Age 34 years, Occupation Service	]
	Flat No.401 Park West Apartment,	]
	1, Raheja Estate, Kulup Wadi	]
	Borivali (East), Mumbai 400 066	]
		]..... Respondents.

Mr. Arjun Singh Thakur i/by Ms. Sushma Singh for the Petitioners.
Dr. F R Shaikh, APP for the Respondent No.1/State.
Ms. Sonal Parab a/w Ms. Akansha Raut for Respondent No.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 10th MARCH 2021

JUDGMENT : (PER S. S. SHINDE, J)

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

2 This Petition is filed for the following substantive relief :-

- (a) This Hon'ble Court be pleased to quash the Charge Sheet and resultantly the proceedings in Criminal Case No.PW/3245/2016 pending before the 68th Additional Chief Metropolitan Magistrate's Court at Borivali, Mumbai arising out of First Information Report bearing Crime Register No.396 of 2015 registered with the Kasturba Marg Police Station, Kasturba Cross Road No.1, Chinchpada, Borivali (East), Mumbai – 400 066 under Sections 498(A), 504, 506 read with Section 34 of the Indian Penal Code, 1860 against the Petitioners herein.

3 The learned counsel appearing for the Petitioners and 2nd Respondent jointly submit that the parties have settled the dispute, and consent terms have been filed before the Family Court, Bandra, Mumbai.

4 The 2nd Respondent is present before this Court. She is identified

by her advocate. She stated that it is her voluntary act to enter into such settlement and give consent for quashing the chargesheet and/or the impugned proceedings arising out of C R No.396 of 2015.

5 The 2nd Respondent has filed her affidavit in the matter. In paragraphs 4 to 8 she has stated thus :-

“4 I say that, in terms of the aforesaid Consent Terms, which record a lawful settlement between the parties, I am filing the present Affidavit withdrawing all allegations, statements and contentions made by me against the Petitioners in the impugned proceedings.

5 Accordingly I have no objection if the present Writ Petition is allowed and the impugned charge-sheet and/or ;impugned proceedings are quashed.

6 I agree to personally attend this Hon’ble Court at the hearing of aforesaid Criminal Writ Petition.

7 I say that, I am filing the present Affidavit consenting to quashing of the impugned proceedings and chargesheet out of my free will and agency and in a sound and disposing state of mind. I state that there is no fear, fraud, undue influence, coercion or compulsion either in me making the present Affidavit or in the filing of the aforesaid Consent Terms dated

15th June 2019 before the Family Court at Bandra, Mumbai.

8 I say that the settlement arrived at between the parties is lawful and the disputes which are subject matter of the impugned chargesheet and impugned proceedings are personal in nature and there is no element of any public character or interest involved therein.”

6 Since the parties have amicably settled the dispute and the consent terms are arrived at between the parties and such consent terms are filed before the Family Court, Bandra, Mumbai and the issues raised before the Family Court, Bandra, are going to be decided by the said court, we deem it appropriate not to give elaborate reasons. Suffice it to say that in view of amicable settlement arrived at between the parties and the statements made by the 2nd Respondent in her affidavit filed before this Court, the 2nd Respondent does not wish to peruse allegations made by her in the impugned FIR and participate in the proceedings in Criminal Case No.PW/3245/2016 pending before the 68th Additional Chief Metropolitan Magistrate’s Court at Borivali, Mumbai arising out of First Information Report bearing Crime Register No.396 of 2015 registered with the Kasturba Marg Police Station, Kasturba Cross Road No.1, Chinchpada, Borivali (East), Mumbai – 400 066 under Sections 498(A), 504, 506 read with Section 34 of the Indian Penal Code, 1860 against the Petitioners herein, we are inclined to allow this Writ Petition.

7 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ 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 guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

8 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 2 is not going to support the allegations made in

1 2012 (10) SCC 303

the impugned FIR and further continuation of the proceedings in Criminal Case No.PW/3245/2016 pending before the 68th Additional Chief Metropolitan Magistrate's Court at Borivali, Mumbai arising out of First Information Report bearing Crime Register No.396 of 2015 registered with the Kasturba Marg Police Station, Kasturba Cross Road No.1, Chinchpada, Borivali (East), Mumbai – 400 066 under Sections 498(A), 504, 506 read with Section 34 of the Indian Penal Code, 1860 against the Petitioners herein would tantamount to the abuse of the process of the Law/Court. Since the Respondent No.2 is not going to support the allegations made in the impugned FIR, the chances of the conviction of the Petitioners would be remote and bleak. In that view of the matter, the writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

- (a) This Hon'ble Court be pleased to quash the Charge Sheet and resultantly the proceedings in Criminal Case No.PW/3245/2016 pending before the 68th Additional Chief Metropolitan Magistrate's Court at Borivali, Mumbai arising out of First Information Report bearing Crime Register No.396 of 2015 registered with the Kasturba Marg Police Station, Kasturba Cross Road No.1, Chinchpada, Borivali (East), Mumbai – 400 066 under Sections 498(A), 504, 506 read with Section 34 of the Indian Penal Code, 1860 against the Petitioners herein.

9 Rule is made absolute to the above extent and, the Writ Petition stands disposed of accordingly.

10 The parties to abide strictly by the Consent Terms filed before the Family Court at Bandra, Mumbai and shall cooperate with the Family Court, Bandra, Mumbai for deciding the proceedings before it by attending the dates fixed by the said Court.

[MANISH PITALE, J]

[S. S. SHINDE , J]