

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.14 OF 2021

- 1]

Mr. Abhijeet Ramesh Gage
Age 34 years, Occ : Service

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- 2]

Mr. Ramesh Narhari Gage
Age 62 years, Occupation – Retired

]
- 3]

Mrs. Malati Ramesh Gage
Age 62 years, occ : Housewife

]
- Petitioner Nos. 1 to 3 are residing at
Room No.15, Manmandir Chawl
Hanuman Nagar, Bandrekar Wadi
Jogeshwari (E), Mumbai – 400 060

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- 4]

Mrs. Mamta Nitin Late
Age 37 years, Occ : Housewife

]
- 5]

Mr. Nitin Chandrakant Late
Age 41 years, Occ : Service

]
- Petitioner Nos.4 & 5 are permanently
Residing at Plot No.3, Matoshri Niwas,
Late Nagar, Hirawadi, Panchawati,
Nashik – 422003

]
- Petitioners
(Ori.Accused)

]

Versus

- 1]

The State of Maharashtra

]
- 2]

The Inspector of Police
Jogeshwari Police Station
Jogeshwari, Mumbai 400 060

]
- 3]

Mrs. Nisha Abhijeet Gage
Alias Ms. Nisha Dinesh Vasankar
Age 33 years, occ : Self Employed
Residing at G-2, Lakshmi Zore Chawl,
Rani Sati Marg, Vistarit, Malad (E),
Mumbai – 400 097.

]
- Respondents

]

Mr. Deepak S Devkar for the Petitioners.
Mr. S R Shinde, APP for the Respondents/State.
Ms. Ridhi K. Thakkar for Respondent No.3.
Respondent No.3 present through Video Conferencing.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 29th JULY 2021

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

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

2 The Petitioners, by this Writ Petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, seek relief of quashing the Charge-sheet bearing CC No.Special Case SCST/7/2019 pending before the City Civil & Sessions Court, Dindoshi, CR-9, Dindoshi, arising out of C.R. No.30 of 2019 registered with Jogeshwari Police Station at the instance of the 3rd Respondent for the offences punishable under Sections 498A, 323, 406, 504, 506 r/w 34 of the Indian Penal Code and under Section 3(1)(R)(S) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989

3 The learned counsel appearing for the Petitioners and the learned counsel appearing for Respondent No.3 jointly submit that the parties have settled the dispute. They further submit that the dispute between the parties

has been settled amicably and the consent terms dated 11/12/2020 have been filed in the Petition for Divorce by Mutual Consent before the Family Court, Bandra, Mumbai. The copy of the consent terms dated 11/12/2020 is placed on record at page 234 of the Writ Paper Book.

4 The 3rd Respondent is present before this Court through Video Conferencing. The learned counsel appearing for the Respondent No.3 identified the 3rd Respondent. When we interacted with the 3rd Respondent, she stated that it is her voluntary act to enter into amicable settlement. She further stated that there is no coercion or duress. She further stated that dispute between her and the Petitioners has been settled amicably and the consent terms have been filed in the Divorce Petition pending before the Family Court, Bandra, Mumbai. She has no objection for quashing the impugned FIR and the charge-sheet.

5 In support of her aforesaid statements, the 3rd Respondent has filed her affidavit before this Court. In paragraphs 3 to 9, the 3rd Respondent has stated thus :-

“3 I say that Petitioner No.1 is my husband, Petitioner No.2 is my father-in-law, the Petitioner No.3 are my mother-in-law, Petitioner No.4 is my sister-in-law and Petitioner No.5 is my brother-in-law, respectively.

4 I say that I have filed a Petition bearing No.A-1786 of 2020 for Divorce under section 13(1)(i) and (ia) of the Hindu Marriage Act, 1955 before the Ld. Family Court,

Bandra, Mumbai against the Petitioner No.1. I say that, during the pendency of the aforesaid Petition before the Ld. Family Court, Bandra, Mumbai, Petitioner No.1 and I decided to settle the matter amicably by converting the aforesaid Petition into Mutual Consent Petition under Section 13B of the Hindu Marriage Act, 1955 as per the terms and conditions agreement between us. Accordingly, with the help of our Advocates and Ld. Counselor of the Ld. Family Court we have drawn the Consent Terms in writing to settle all the disputes between ourselves as we have decided to reside separately in peace and in harmony. I say that the Consent Terms dated 11/12/2020 to the effect has already been filed and verified by the Ld. Family Court, Bandra, Mumbai and we have already begun the process for obtaining divorce by mutual consent. Hereto annexed and marked as "Exhibit A" is the copy of the Consent Terms dated 11/12/2020

- 5 I say that the dispute between us has been settled amicably on the terms and conditions specifically and categorically mentioned in the Consent Terms dated 11/12/2020. I confirm and admit the contents of the said Consent Terms dated 11/12/2020, which have already been filed and verified before the Ld. Family Court, Bandra, Mumbai. I say that, needless to state, therefore, I do not seek to pursue SPL CASE SCST NO.7 of 2019 and/or FIR being C. R. No.30 of 2019 dated 2/3/2019 lodged with the Respondent No.2 under Section 498(A), 406, 323, 504, 506 and section 34 of the Indian Penal Code, 1860 and under section 3(1)(R)(S) of Schedule Caste and Schedule Tribes (Prevention of Atrocities), Act, 1989, which is filed by me against the Petitioners, herein, and which is pending before the Hon'ble City Civil and Sessions Court, Dindhoshi, Mumbai."
- 6 I say that I withdraw all the allegations which I have made against the Petitioners, herein, in the aforesaid FIR/Chargesheet. I also say that I have no other claim against the Petitioners save and except mentioned in the Consent Terms dated 11/12/2020 and specifically and categorically mentioned above.

- 7 I say that considering the above I have decided not to proceed in the aforesaid FIR being C.R. No.30 of 2019 dated 2/3/2019 and Chargesheet filed in the Special Case No.SCST 7/2019 before the Hon'ble City Civil and Sessions Court, Dindhoshi, Mumbai, against the Petitioners.
- 8 I therefore say that I do not have any objection if the Special Case No.SC ST 7/2019 before the Hon'ble City Civil and Session Court, Dindhoshi, Mumbai in the FIR being No.30/2019 before Jogeshwari (East) Police Station date : 2/3/2019 for offenses punishable under section 498(A), 406, 323, 504, 506 and Section 34 of the Indian Penal Code, 1860 and under section 3(1)(R)(S) of Schedule Caste and Schedule Tribes (Prevention of Atrocities), Act, 1989, against the Petitioners is quashed by this Hon'ble Court subject to consent Terms dated 11/12/2020.
- 9 I also say that this Affidavit is not being filed under any coercion or duress and is being prepared and filed willingly in view of the Consent Terms dated 11/12/2020 which has been arrived at, between the Petitioner No.1 and me."

6 Since the parties have amicably settled the dispute and the 3rd Respondent has stated before this Court that it is her voluntary act to enter into the settlement without any coercion or duress, no fruitful purpose will be served by continuing the further proceedings in CC No. Special Case SCST/7/2019 pending before the City Civil & Sessions Court, Dindoshi, CR-9, Dindoshi, arising out of C.R. No.30 of 2019 registered with Jogeshwari Police Station for the offences punishable under Sections 498A, 323, 406, 504, 506 r/w 34 of the Indian Penal Code and under Section 3(1)(R)(S) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

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 case at hand, though offences punishable under Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act are alleged, yet, it is clear that the matrimonial dispute is the principal cause of the dispute. In the

1 2012 (10) SCC 303

light of aforesaid averments in the affidavit of 3rd Respondent, we do not find that the offences punishable under SC & ST Act can be said to have been, prima facie, made out.

9 In the light of discussion in foregoing paragraphs, it is abundantly clear that the 3rd Respondent is not going to support the allegations made in the impugned FIR and continuation of further proceedings in the impugned FIR lodged by the 3rd Respondent against and in CC No.Specail Case SCST/7/2019 the Petitioners would tantamount to the abuse of the process of the Court. Since the Respondent No.3 is not going to support the allegations in the FIR, the chances of conviction of the Petitioners would be remote and bleak. In order to prevent the abuse of the process of the Court and to secure the ends of justice, it would be appropriate to quash and set aside impugned FIR and the Charge-sheet being CC No. Special Case SCST/7/2019 pending before the City Civil & Sessions Court, Dindoshi, CR-9, Dindoshi, arising out of C.R. No.30 of 2019 registered with Jogeshwari Police Station at the instance of the 3rd Respondent for the offences punishable under Sections 498A, 323, 406, 504, 506 r/w 34 of the Indian Penal Code and under Section 3(1)(R)(S) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

10 In that view of the matter, the Writ Petition deserves to be allowed and, the same is allowed in terms of prayer clause (a) which reads thus :-

“(a) This Hon’ble Court be pleased to quashing the said

Charge-Sheet bearing in CC No. Special Case SCST/7/2019 pending before the City Civil & Session Court, Dindoshi, CR-9, Dindoshi, vide C.R. No.30 of 2019 for the alleged offences punishable U/s. 498A, 323, 406, 504, 506 r/w 34 of the Indian Penal Code AND U/S. 3(1)(R)(S) OF SCHEDULE CASTE AND SCHEDULE TRIBES (PREVENTION OF ATROCITIES) ACT, 1989.”

Rule made absolute in the aforesaid terms. The Writ Petition stands disposed of accordingly.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]