

VISHWANATH
SATYANARAYANA
SHERLA

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

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Date: 2021.07.31
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CRIMINAL APPLICATION NO.145 OF 2021

Ankit Bhartkumar Gadoya & others

... Applicants

Versus

The State of Maharashtra & another

... Respondents

Mr.Yogesh P. Gandhi for the Applicants

Mr.K.V. Saste, APP, for Respondent – State

Mr.Nikhil S. Udeshi for Respondent No.2

Respondent No.2 present through V.C.

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

DATED: JULY 30, 2021

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

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.
2. This Application takes exception to filing of First Information Report No.1070 of 2020 for offences punishable under sections 498-A, 504, 506 read with section 34 of the Indian Penal Code registered with Dahisar Police Station.

3. Learned Counsel appearing for the Applicants and Respondent No.2 jointly submit that the parties have amicably settled the dispute and to that effect Consent Terms are filed before the Family Court at Bandra. A copy of the consent terms is placed on record in the compilation of this Writ Petition.

4. We have interacted with Respondent No.2 through video conferencing. She stated that it is her voluntary act to enter into amicable settlement with the petitioner and has joined the prayer of the petitioner for quashing the First Information Report.

5. Respondent No.2 has filed an affidavit. In the said affidavit, in paragraphs 3 to 8, it is stated as under:

“3. I say that all the differences of opinion and the incompatible matrimonial disputes between the parties have been mutually and amicably resolved and satisfied by and between both the parties, in terms of the Consent Terms dated 21-08-2020 duly executed and arrived into by and between the parties, which ultimately came to be filed before the Hon’ble Session Court At Dindoshi, Mumbai in ABA No.619 of 2020, the copy of the said Consent Terms is already filed with the aforesaid Criminal Application vide **Exhibit-’E’** to the above petition (please see pages 23 to 31). Similarly, in terms of the aforesaid said Consent Terms, the parties to the Petition, also and accordingly filed the consequential Consent Terms dated 30-12-2020 before the Hon’ble Family Court Bandra at Mumbai. Hereto annexed and marked as **Exhibit-’1’** which is the copy of the said

Consent Terms dated 30-12-2020 filed before the Hon'ble Family Court Bandra at Mumbai.

4. I say and submit that in terms of the aforesaid recitals, nothing survives in the said matter/s amongst and between the parties. In view of all the aforesaid undisputed admitted facts, it is most respectfully submitted that considering the pages of the both the spouses, it would be a mere waste of the time of the Hon'ble courts and no useful purpose would be served if the said proceedings are merely allowed to be continued amongst the parties, as continuation of the further proceedings would be an exercise in futility.

5. Hence, it is most respectfully and humbly and jointly submitted by me and also by and for and on behalf of the Petitioners abovenamed inter-alia that, both the parties having amicably settled the disputes and to that effect, the Consent Terms are also filed before the concerned courts as aforesaid.

6. I say that it is my voluntary act to enter into the settlement and join the prayer made by the Petitioners to quash the FIR in CR. No.1070/2020 of the Dahisar Police Station, Mumbai and if any consequential Case No .____ / PW of 2020 pending before the Metropolitan Magistrate's 26th Court, at Borivali, Mumbai/

7. I say that in light of all the aforesaid contentions and averments in the foregoing paragraphs, and in order to secure the ends of justice which would rather prevent the abuse of the process of the concerned courts, I respectfully pray that the above Criminal Application/Petition may pleased be allowed in terms of the prayer clause (d) to the Petition and consequently the consequent proceeding if any numbered as Case No.-----/PW/2020 pending before the Metropolitan Magistrate's 26th Court, at Borivali, Mumbai may accordingly be pleased to be Quashed and set aside, in the interest of justice and obliged.

8. Hence, it is most respectfully prayed and submitted that the said FIR in CR.No.1070 / 2020 of the Dahisar Police

Station, Mumbai and the consequently the consequent proceeding if any numbered as Case No._____/PW/2020 pending before the Metropolitan Magistrate's 26th Court, at Borivali, Mumbai be quashed and set aside in the interest of justices."

6. The petitioners and Respondent No.1 have amicably settled the dispute and to that effect, consent terms are filed by the parties and also affidavit is filed by Respondent No.2. It is stated that it is the voluntary act of Respondent No.2 to enter into such settlement and she has also received the amount stated in the consent terms filed before the Family Court. It is also stated that the marriage is yet to be dissolved by a decree of divorce by the Family Court at Bandra and the final amount will be paid to her at the time of decree of divorce to be passed by the Family Court, Bandra.

7. In view of the discussion in the foregoing paragraphs, in our considered opinion, further continuation of First Information Report No.1070 of 2020 for offences punishable under sections 498-A, 504, 506 read with section 34 of the Indian Penal Code registered with Dahisar Police Station, Mumbai, would be an exercise in futility and would tantamount to abuse of process of the concerned Court.

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 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 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.

1 2012 (10) SCC 303

9. In that view of the matter, in order to secure the ends of justice and to prevent further abuse of the process of the concerned Court, we are inclined to allow the application. Accordingly, the application is allowed and Rule is made absolute in terms of prayer clause (c) and (d), which are as under:

“(c) This Hon’ble Court be pleased to quash for records of C.R. No.1070 of 2020 of Dahisar Police Station.

(d) After going through the records of C.R. No.1070 of 2020 of Dahisar Police Station, and the annexures annexed herewith, this Hon’ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction quashing the said FIR No.1070 of 2020 for alleged offenses punishable 498(A), 504, 506 R/W 34 of Indian Penal Code, as regards the Petitioners in view of the compromise (consent terms for Divorce) entered between the parties.”

10. Rule is made absolute to the above extent.

11. Writ Petition stands disposed off accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)