

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.286 OF 2021

- 1] Nilesh Mahadev Fulsundar]
Age 31 years, occupation : Business]
Address : Behind Sainath Hotel]
C-Chawl, Room No.14, Laxmi Udyog Nagar]
Kanjurmarg (West) Mumbai – 400078]
]
- 2] Mahadev Umaji Fulsundar]
Age 58 years, Occupation : Nil]
Address : Behind Sainath Hotel,]
C-Chawl, Room No.14, Laxmi Udyog Nagar]
Kanjurmarg (West), Mumbai – 400078]
]
- 3] Nirmala Mahadev Fulsundar]
Age 50 years, Occupation : Nil]
Address : Behind Sainath Hotel,]
C-Chawl, Room No.14, Laxmi Udyog Nagar]
Kanjurmarg (West), Mumbai – 400078]
]
- 4] Deepak Mahadev Fulsundar]
Age 34 years, Occupation : Nil]
Address : Behind Sainath Hotel,]
C-Chawl, Room No.14, Laxmi Udyog Nagar]
Kanjurmarg (West), Mumbai – 400078]
]
- 5] Snehal Deepak Fulsundar]
Age 32 years, Occupation : Nil]
Address : Behind Sainath Hotel,]
C-Chawl, Room No.14, Laxmi Udyog Nagar]
Kanjurmarg (West), Mumbai – 400078]..... Petitioners.

Versus

- 1] State of Maharashtra]
Mantralaya, Mumbai-01]
(Through Parksite Police Station, Mumbai]
]
- 2] Shyamli Nilesh Fulsundar]

Age : 29 years, Occupation : Not Known]
Address : Room No.6, Bhagubai Chawl,]
Opp. Navyug Mittr Mandal, Chendani]
Koliwada, Mithbunder Road, Thane East]..... Respondents.

Mr. Swapnil Newaskar for the Petitioners.
Mr. S R Shinde, APP for the Respondent/State.
Ms. Aparna C Khamkar for Respondent No.2.
Mrs. Shyamli Nilesh Fulsundar – Respondent No.2 present.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 02nd FEBRUARY 2021

ORAL 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 It is jointly submitted by the learned counsel appearing for the Petitioners and Respondent No.2 that the Petitioners and Respondent No.2 have amicably settled the dispute. It is also submitted that the Consent Terms arrived at between the Petitioners and Respondent No.2 have been filed before the Family Court, Bandra, Mumbai in Marriage Petition No.A-603/2019 (Nilesh Mahadev Fulsundar v/s. Shyamali Nilesh Fulsundar).

3 The 2nd Respondent is present before this Court. She has been identified by her advocate. When we interacted with her, she stated that it is

her voluntary act without coercion to enter into the settlement and file the consent terms before the Family Court at Bandra. She further stated that she has no objection for quashing the impugned FIR. In support of her aforesaid statements, the 2nd Respondent has filed the affidavit before this Court.

4 In paragraphs 2 to 9 of her affidavit, Respondent No.2 has stated thus :-

“2 I say that present petition for quashing is filed with my consent.

3 I say that during the pendency of the above criminal proceeding, I and the Petitioner have amicably settled our differences by way of CONSENT TERMS and pursuant to the undertaking arrived at between us, present petition is filed for the quashing the above criminal proceeding by my consent.

4 I say that I and petitioner no.1 entered in the consent terms dated 15 September 2020 to settle our all disputes.

5 That the divorce Petition No. A 603 of 2019 at Family Court Bandra is still pending. I and the petitioner no.1 have agreed for the mutual consent divorce and have signed the petition for the mutual consent divorce. The consent terms for divorce as mentioned above is already

filed before Family Court at Bandra.

6 I say that petitioner has complied with the consent terms and has given me Rs.2,00,000/- by DD 217753 dated 14/01/2021 and all articles, gold etc as mentioned in para 2 of the consent terms while withdrawing the proceeding under Protection of Women From Domestic Violence Act at bearing No.58/2019 at JMFC Court Thane. I further say that the said proceeding has been successfully withdrawn by me as agreed in the consent terms.

7 I say that the petitioner has agreed to tender me the last installment of Rs.2,00,000/- by DD No.217786 dated 30/01/2021 before this hon'ble Court as full compliance of the para no.1 of the consent terms.

8 I say that whatever stated in consent terms is binding on me and I undertake to follow the same.

9 I say that irreparable loss will be caused to me if criminal proceeding against petitioner is not quashed by this Hon'ble Court.

5 Since the Petitioners and the 2nd Respondent have amicably settled the dispute and the said dispute arose out of matrimonial discord, and in view of the fact that the parties have already arrived at the consent terms filed before the Family Court Bandra, no fruitful purpose will be served by

continuing the further investigation of FIR being No.54/2020, dated 31/01/2020 registered at Park Site Police Station, Vikhroli West, Mumbai for the offences punishable under Section 498A, 323, 406, 504, 506, 34 of the Indian Penal Code.

6 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 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

7 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 the FIR and further continuation of investigation in the impugned FIR would tantamount to the abuse of the process of the Law/Court. Since the Respondent No. 2 is not going to support the allegations in the FIR the chances of conviction of the Petitioners would be remote and bleak. The entire dispute arose out of matrimonial discord. 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) The Impugned FIR No.54/2020, dated 31/01/2020, registered U/s. 498A, 323, 406, 504, 506, 34 of IPC, and registered with Park Site Police Station, Vikhroli West, Mumbai may please be quashed and set aside.”

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

[MANISH PITALE, J]

[S. S. SHINDE , J]