

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.438 OF 2021

Ms. Samran @ Alifiya Shaikh
aged : 27 years, Occ : Service
Residing at Summer Queen Bldg.
Fourth Floor, Arthur Bunder Road,
Colaba, Mumbai
And also at T-3, 901, NRI Residency
\Sector 45, Near HDFC Bank
Noida, New Delhi 201 301.

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]..... Petitioner.

Versus

- 1] The State of Maharashtra
At the instance of Sr. Inspector of
Police, Colaba Police Station
Vide their C.R.No.30 of 2020

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- 2] Ms. Durre Shehwar Azmi
Aged : 39 years, Occ : Household
Residing at Ahmed Mansion
First Floor, H N Azmi Marg, Colaba
Mumbai.

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].... Respondent.
] (Orig. Complainant)

Mr. Sudeep Pasbola i/by Mr. Karl P Rustomkhan for the Petitioner.
Mr. J P Yagnik, APP for the Respondent No.1/State.
Mr. Mubin Solkar a/w Mr. Zarak Khan a.w Mr. Saif Shah i/by Mr. Aamir Sopariwala for Respondent N.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 11th March 2021
Pronounced on : 22nd March 2021

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

1 Rule. Rule made returnable forthwith and heard with the consent

of the learned counsel for the parties.

2 By this Writ Petition the Petitioner seeks the following substantial relief :-

“(b) This Hon’ble Court be pleased to quash and set aside the Criminal Case No.PW/800498/2020 pending in the file of learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of C R No.30 of 2020 registered with Colaba Police Station and all other proceedings arising out of the said C. R.”

3 The Petitioner herein is arraigned as an accused in the FIR bearing C R No.30 of 2020 registered with Colaba Police Station for the offences punishable under Sections 509 506 and 504 of the Indian Penal Code at the instant of Respondent No.2 herein.

4 It is alleged by the 2nd Respondent in the said FIR that her father Abu Asim Azmi and his friend Nasir Jamal Shaikh were business partners, but due to certain disputes, their relations have been severed. She knows the Petitioner as being daughter of the said Nasir Jamal Shaikh. It is alleged that on 27/01/2020 at about 11.30 local time, she received a phone call from unknown mobile number. Since she was busy, she did not pay attention to the said call. Thereafter she received a call from her sister Ms. Bushara who informed her that she had answered the call from the aforesaid unknown

number and that the caller was Ms. Samran Shaikh i.e. the Petitioner herein and that the Petitioner had used abusive and obscene language and as such she did not respond to the call from the said unknown number. Thereafter when the 2nd Respondent checked up her whatsapp, she saw that she had received about 90 messages from the Petitioner's mobile No.9967377113 in which the Petitioner had not only used abusive and obscene language against her father and her family members, but also threatened them. At the same time, the 2nd Respondent received another whatsapp message from an unknown mobile No. +60 1160654429 from Ms. Arshi - the sister of the Petitioner who also used obscene and abusive language. As such she became aware that Petitioner and her sister had hatched a conspiracy to harass her, due to which the 2nd Respondent suffered mental agony and did not keep well for a long period of time. She was feeling embarrassed and insulted due to the use of the abusive language against her.

4 It is submitted that investigation in this CR has been completed and the charge sheet came to be filed before the Court of the learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai and the case is numbered as Criminal Case No.PW/800498/2020.

5 It is submitted that due to some misunderstandings, certain disputes arose inter se between the father of the Petitioner and the father of

Respondent No.2, due to which complaints and counter complaints were filed against each other. These misunderstandings also spread to the family members of both the parties, and the alleged complaint thereto was a result of the said misunderstanding which has now been resolved amicably by both the parties. It is also submitted that all the disputes between family members of the Petitioner and the family members of the 2nd Respondent are now amicably settled. They have entered into Consent Terms on 04/11/2020 in Commercial Suit No.447 of 2019. The copy of the said Consent Terms is placed on record at Exhibit B on page 49 of the writ paperbook. Under the said Consent Terms it has been agreed between the parties that parties shall withdraw all the allegations made against each other and also amicably withdraw and/or get quashed the present complaint and other criminal cases.

7 The learned counsel appearing for the Petitioner submits that, without entering upon the merits of the case, this Court may allow this Petition on the basis of the settlement arrived at between parties.

8 The learned counsel appearing for the 2nd Respondent submitted that the parties have amicably settled their disputes and the 2nd Respondent No.2 does not intend to prosecute the Petitioner and therefore, the 2nd Respondent is willing to give his consent for quashment of the impugned proceedings.

9 The 2nd Respondent was present before this Court on 11/03/2021 when the matter was heard. She was identified by her advocate. When we interacted with her, she stated that both the parties have amicably settled the disputes and that they have filed consent terms in the Commercial Suit. She further stated that she has filed her affidavit on her own will, without any coercion or pressure. It is stated therein that she has no objection to the prayer of the Petitioner being granted.

10 The relevant paragraphs of the said consent terms are paragraphs 21 to 26 which for the purpose of ready reference are reproduced herein under:-

“Bake House Building

21 Shop No.14, Ground Floor, New Bake House, Maharashtra Chamber of Commerce Lane, Fort, Mumbai – 400023 admeasuring 1100 sq.ft. Carpet area. Plaintiff No.1 agrees to release and transfer all his right, title and interest in the said shop No.14 to Defendant No.1 upon (I) the quashing of all criminal complaints mentioned herein, and (ii) the withdrawal by Defendant No.1 of the complaints made by him to the MCGM, BEST and other authorities against the Plaintiffs and their various businesses. Plaintiff No.1 shall arrange to hand over all

the documents and other court proceeding papers to Defendant No.1 of Shop No.14 along with vacant & peaceful possession thereof within 60 days from execution of these Consent Terms.

22 It is hereby agreed declared and confirmed that Defendant No.1 has no claims against the Plaintiffs with respect to the following premises and the business conducted therefrom, and accepts that he has no right, title or interest in the same:

- 1) The premises bearing No.22, on the ground floor of 16/22 Bake House, Fort, Mumbai – 4000023 in which there is currently a proposed restaurant by the name “Town Culture”
- 2) The premises bearing No.24, on the ground floor of 16/22 Bake House, Fort, Mumbai – 400 023 in which there is currently a bakery by the name “Pandora’s Box Bakery”.
- 3) There premises bearing No.12, on the ground floor of “New Bake House”. Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Carter’s Blue”.
- 4) The office at the front part of the third floor of 12 and 16 Old & New Bake House, Fort, Mumbai – 400023.”

23 It is hereby agreed, declared and confirmed that the Plaintiffs have no claims against Defendant No.1 with respect to the following premises and the business conducted therefrom, and respect accept that they have no right, title or interest in the same:

- (a) The said Shop No.14, Ground Floor, New Bake House, Maharashtra Chamber of Commerce Lane, Fort, Mumbai – 400023.
- (b) The premises bearing No. 16, on the ground floor of Old Bake House, Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Colonial Palate.”
- (c) The premises bearing No.16, on the mezzanine floor of Old Bake House, Fort, Mumbai – 400023 in which there is currently a restaurant by the name “Colonial Palate”
- (d) The Office at the back part of the third floor of Old & New Bake House, Fort, Mumbai – 400023”

Criminal Complaints :

“24 It is hereby agreed, declared and confirmed that both parties and their respective family members shall initiate proceedings before appropriate courts/authorities for quashing/withdrawal of the following criminal complaint within 30 days from execution of these Consent Terms after due compliance of the Consent Terms by both parties and their family members shall

not make any complaints in the future for the same facts.

- (e) Criminal Complaint No.2800144/SW/2019 filed by Defendant No.1 against Plaintiff No.1 before the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai
- (f) First Information Report bearing No.353/2019 filed in the LT Marg Police Station against Plaintiff No.1 upon the complaint of Defendant No.1.
- (g) First information Report bearing No.30/2020 filed in the Colaba Police Station against Ms. Samran (also known as Alifiya) Shaikh upon the complaint of Mrs. Shehwar Azmi.
- (h) First information Report bearing No.61/2020 filed in the Agripada Police Station against Ms. Samran Shaikh Upon the complaint of Ms. Bushra Mansuri.
- (i) First Information Report bearing No.28/2020 filed in the MRA Marg Police Station against Mohammed Amir Khan upon the complaint of Plaintiff No.2.
- (j) First Information Report bearing No.27/2020 filed in the Colaba Police Station against Rayan Shaikh, Yusuf Shaikh and Mohammed Amir Khan upon the complaint of Plaintiff No.1.

25 The parties and their family members agree and

undertake to co-operate in jointly filing appropriate proceedings in the Hon'ble Bombay Court for quashing and disposing of the above criminal proceedings as advised by the Advocates.

26 Defendant No.1 and Plaintiff No.1 agrees and undertakes to withdraw all the police complaints made by them against them and their family members and will not make any complaint in future for the same facts.”

11 In paragraphs 1 to 5, the 2nd Respondent in her affidavit dated 08/12/20220 filed in this Writ Petition in support of the settlement, has stated thus :-

“1 I state that I know the Petitioner and her family members since a long period of time. My father is a MLA and also the President of Maharashtra Samajwadi Party. I say that the father of the Petitioner and my father were business partners, but due to their inter se disputes, our relation were severed.

2 I state that I had received certain messages on my whatsapp allegedly sent by the Petitioner, and therefore, in a fit of rage, I lodged a complaint against her on 01/02/2020 with the Colaba Police Station which came to be registered vide CR No.30 of 2020 for commission of alleged offences punishable under Section 509 506 and 504 of Indian Penal Code.

3 I say that after registration of the aforesaid complaint, our common acquaintance and mutual friends approached me and requested me to put an end the dispute with the Petitioner I say that after deep introspection over the events and after due deliberations, I have realized that I acted in undue haste and, in a moment of anger, proceeded to lodge complaint against Petitioner.

4 I say that since the registration of the aforesaid C. R.30 of 2020 with Colaba Police Station, I have realized that it is in our mutual welfare and interest that we put an end to this acrimony and settle the dispute amicably. I do not want to proceed with my complaint and do not intend to prosecute the Petitioners. I have no complaint, grievance or ill will against the Petitioner. I state that the Petitioner has not coerced me or unduly influenced me into executing this affidavit in any manner whatsoever, and the same is executed out of my own free will.

5 In view of the same, I have no objection if this Hon'ble Court quashes the said CR No.30 of 2020 which was registered with Colaba Police Station on the basis of my complaint as well as all further proceedings arising out of the said C.R.”

12 The learned counsel appearing for both the parties submit that the father of the Petitioner and the father of Respondent No.2 have voluntarily agreed to resolve their dispute which is basically commercial in nature, and

there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that both the parties have amicably resolved/settled the dispute and decided to seek quashing of Criminal Case No.PW/800498/2020 pending in the file of learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of C R No.30 of 2020 registered with Colaba Police Station for the offences punishable under Sections 509 506 and 504 of the Indian Penal Code, and all other proceedings arising out of the said C. R.

13 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 resolves 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

¹ 2012 (10) SCC 303

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.

14 In view of the fact that the father of the Petitioner and the father of Respondent No.2 have resolved their disputes and to that effect the consent terms referred to above has been filed in the Commercial Suit and in view of the fact that the affidavit filed by the 2nd Respondent giving no objection for quashment of the Criminal Case No.PW/800498/2020 pending in the file of learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of C R No.30 of 2020 registered with Colaba Police Station for the offences punishable under Sections 509, 506 and 504 of the Indian Penal Code, no fruitful purpose will be served by continuing the further prosecution in Criminal Case No.PW/800498/2020 pending in the file of learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of C R No.30 of 2020 registered with Colaba Police Station for the offences punishable under Sections 509, 506 and 504 of the Indian Penal Code.

15 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made in the impugned FIR and prosecute the present Petitioner. Entire dispute arose out of

commercial transactions. The further continuation of proceedings in Criminal Case No.PW/800498/2020 pending in the file of learned Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of C R No.30 of 2020 registered with Colaba Police Station for the offences punishable under Sections 509, 506 and 504 of the Indian Penal, would tantamount to abuse of the process of the Court. Since the 2nd Respondent by way of filing her affidavit has stated that, she is not interested to pursue the allegations made in the impugned FIR and would not participate in the pending proceedings before the concerned Court, the chances of conviction of the Petitioner would be bleak and remote.

16 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the Writ Petition deserves to be allowed and accordingly the same is allowed in terms of prayer clause (b). We direct the parties to delete all the messages which are the basis for filing the present FIR. Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]