

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.762 OF 2020

- | | | |
|----|--|---------------------|
| 1] | Jyoti Mahesh Sharma |] |
| | Age 39 years, Occ : Housewife, adult, |] |
| | |] |
| 2] | Harsh Rajendra Upadhyaya |] |
| | Age 37 years, Occ : Service, both adult |] |
| | Indian Inhabitant of Mumbai, residing at |] |
| | M/106, Silent Park, Mira Bhayander Road, |] |
| | Near Flyover Bridge, Bhayander (East) |] |
| | Thane, Maharashtra, Pin – 401105 |] |
| | Petitioner Nos. 1 & 2 same Address |]..... Petitioners. |

Versus

- | | | |
|----|--|---------------------|
| 1] | The State of Maharashtra |] |
| | |] |
| 2] | Sr. Inspector of Police |] |
| | Kherwadi Police Station, Mumbai |] |
| | |] |
| 3] | Premkumar Sharma |] |
| | Indian Inhabitant of Mumbai, residing at |] |
| | A/204, Nirman Park, Rajmata Jijamata |] |
| | Marg, Pump House, Andheri (East) |] |
| | Mumbai – 400 092 |]..... Respondents. |

ALONG WITH
CRIMINAL APPLICATION NO.141 OF 2020 (NOT ON BOARD ON 18/03/2021)

- | | | |
|----|------------------------------------|---|
| 1] | Mahesh Premkumar Sharma |] |
| | Aged 41 years |] |
| | |] |
| 2] | Premkumar Ramshahi Sharma |] |
| | Aged 63 years, |] |
| | |] |
| 3] | Manoj Premkumar Sharma, |] |
| | Aged 35 years, |] |
| | |] |
| | All residing at A-204, Nirman Park |] |

R.J. Road, Pump House, Andheri (E)]
Mumbai – 400 093]..... Applicants.

Versus

1] The State of Maharashtra]
(At the instance of Meghwadi]
Police Station, Mumbai)]
2] Mrs. Jyoti Mahesh Sharma,]
Residing at 201, Vastu Puja, Vastu]
Enclave, Opp. Parsi Colony,]
Pump House, Andheri (E)]
Mumbai – 400 093]..... Respondents.

Mr. Sachin R Pandey for the Petitioners in Writ Petition No.762 of 2020 and for Respondent No.2 in Criminal Application No.141 of 2020.

Ms. Prabha Badadare i/by Mr. M K Kocharekar for the Applicants in Criminal Application No.141 of 2020 and for Respondent No.762 of 2020.

Mr. Deepak Thakre, PP a/w Mrs. M H Mhatre, APP for the Respondent/State.

Respondent No.3 in Writ Petition No.762 of 2020 is present in Court.

Respondent No.2 in Criminal Application No.141 of 2020 is present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ

Reserved on : 18th MARCH 2021
Pronounced on : 23rd MARCH 2021

JUDGMENT : (PER S S SHINDE, J)

1 Criminal Application No.141 of 2020 is not on board. At the request of learned counsel appearing for the Applicants the same is taken on record.

2 Both the Criminal Writ Petition and the Criminal Application arise out of the FIR lodged by the family members against each other, hence both the Criminal Writ Petition and Criminal Application are being disposed of by this common judgment.

3 Rule in both the Criminal Writ Petition No.762 of 2020 and Criminal Application No.141 of 2020. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

4 The Respondent No.3 – Premkumar Sharma in Criminal Writ Petition has lodged FIR/MECR bearing No.1 of 2019 dated 27/05/2019 against the Petitioners therein at Kherwadi Police Station for the offences punishable under Section 420, 465, 467, 468, 471 and 34 of the Indian Penal Code. Petitioner No.1 and Petitioner No.2 in writ petition are the sister and brother. Petitioner No.1 – Jyoti Sharma is the complainant in Criminal Application. The Petitioners in Criminal Writ Petition pray for the following substantial relief:-

- (a) That this Hon'ble Court be pleased quashed and set aside the FIR/MECR bearing No.1 of 2019 dated 27/05/2019 pending before the Respondent No.2 at Kherwadi Police Station u/Sec. 420, 465, 467, 468, 471 and 34 of the Indian Penal Code in view of the Consent Terms dated 13/08/2019 Exhibit "B" annexed to the

Petition filed before this Court in its Extra Inherent Jurisdiction”

5 The Respondent No.2 – Jyoti Sharma in Criminal Application has lodged FIR No.148 of 2014 dated 18/05/2014 against the Applicants therein at Meghwadi Police Station for the offences punishable under Section 498(A), 406, 504, 34 of the Indian Penal Code. Applicant No.1 is the husband, Applicant No.2 is the father in law and Applicant No.3 is the brother in law of Respondent No.2 – Jyoti Sharma. Applicant No.2 – Premkumar Sharma is the complainant in Criminal Writ Petition. The Applicants in the Criminal Application pray the following substantial relief :-

- (a) This Hon’ble Court be pleased to quash and set aside the impugned C.C. No.1086/PW/2015 pending before the Ld. Metropolitan Magistrate, Railway Mobile Court, Andheri arising out of FIR No.148/2014 dated 18/05/2014 registered with Meghwadi Police Station, Mumbai under Sections 498-A, 406, 504 r/w 34 of Indian Penal Code.”

6 Applicant No.1 – Mahesh Premkumar Sharma and Respondent No.2 – Jyoti Mahesh Sharma in Criminal Application got married on 13/11/2008. On account of allegedly constant harassment caused to Respondent No.2, she filed FIR No.148 of 2014 against the Applicants, who are her husband and in-laws. She has also filed Domestic Violence Complaint being

No.215/DV/2104 before the Learned Metropolitan Magistrate Railway Mobile Court, Andheri, Mumbai.

7 The father-in-law i.e. the Respondent No.3 – Premkumar Sharma in Criminal Writ Petition has lodged FIR/MECR No.01 of 2019 at Kherwadi Police Station against his daughter-in-law i.e. Petitioner No.1 – Jyoti Sharma. It is alleged in the said FIR that Petitioner No.1 Jyoti Sharma in collusion with her brother i.e. the Petitioner No.2 – Harsh Upadhayaya has submitted a forged affidavit to procure income certificate by forging the signature of her husband Mahesh and submitted it to the MHADA for completing the allotment procedures.

8 The learned counsel appearing for the parties jointly submit that during pendency of Domestic Violence proceedings, the parties have amicably settled the dispute and to that effect consent terms have been arrived at between the parties and filed the same before the learned Metropolitan Magistrate, Railway Mobile Court, Andheri in CC No.215/DV/2014. It is submitted that in the said consent terms both the parties agreed to settle the dispute amicably and withdraw the cases pending each other.

9 It is submitted by the learned counsel for the parties that it is the voluntary act of both the complainants to arrive at settlement and give consent

for quashing the impugned FIR/Chargesheet.

10 This matter was on board on 18/03/2021 for hearing. At that time Respondent No.3 – Premkumar Sharma in Writ Petition, and Respondent No.2 – Jyoti Sharma in Criminal Application were in the Court. They were identified by their respective advocate. When we interacted with them, they stated that it is their voluntary act to enter into the settlement and file the consent terms before the learned Metropolitan Magistrate, Railway Mobile Court, Andheri. They further stated that they have no objection for quashing the impugned FIRs/Chargesheet filed by them against each other. In support of the aforesaid statements, both the Respondent No.3 in writ petition and Respondent No.2 in Application have filed their separate affidavits in these matters.

11 In paragraphs 1 to 5 of his affidavit filed by Respondent No.3 – Premkumar Sharma in Criminal Writ Petition, he has stated thus :-

“1 I say that I have been served with the copy of the above Criminal Application along with annexure thereto. I say that I have been impleaded as Respondent No.3 in the aforesaid Criminal Application. I say that I have lodged a complaint Vide MECR No.01 of 2019 for an offence punishable under Section 420, 465, 467, 468, 471 and 34 of the Indian Penal Code registered with the

Kherwadi Police Station, Mumbai. The said FIR/MECR is pending before the Ld. Metropolitan Magistrate, Bandra Court, Mumbai.

- 2 I say that my son and the Applicant No.1 got married on 13.11.2018 at Vile Parle, Mumbai. However, on account of Cheating and forgery, I have lodged the above FIR/MECR against the Applicants. I say that the Applicant have also filed complaint under the Domestic Violence Act being CC No.215/DV/2014 before the Ld. Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai.
- 3 I say that in view of the Consent Terms filed before the Ld. Metropolitan Magistrate in C.C. No.215/DV/2014 myself hereby giving consent to quash the proceeding pending against the Applicants as agreed by me in the said Consent Terms. I further say that I myself agree to comply with the Consent Terms filed before the Court and cooperate in withdrawing the allegations/case filed against each other as recorded in the Consent Terms.
- 4 I say that I have settled all the disputes with applicants and I do not wish to pursue any legal proceedings against the Applicants in the subject matter.
- 5 I say that I shall cooperate to exonerate the Applicants from the aforesaid complaint by supporting the prayers made in the present application. I say that I have no objection for quashing the aforesaid FIR/MECR No.01 of

2019 dated 27/05/2019 for an offence punishable under section 420, 465, 467, 468, 471 and 34 of the Indian Penal Code registered with the Kherwadi Police Station, Mumbai.

12 In paragraphs 1 to 5 in the affidavit filed by Respondent No.2 – Jyoti Sharma in Criminal Application, she has stated thus :-

“1 I say that I have been served with the copy of the above Criminal Application along with annexure thereto. I say that I have been impleaded as Respondent No.2 in the aforesaid Criminal Application. I say that I have lodged a complaint Vide FIR No.148/2014 dated 18.5.2014 registered with Meghwadi Police Station, Mumbai under Sections 498-A, 406, 506 r/w 34 of Indian Penal Code. The said FIR has been culminated into CC No.1086/PW/2015 and the same is pending before the Ld. Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai.

2 I say that myself and the Applicant No.1 got married on 13.11.2018 at Vile Parle, Mumbai. However, on account of Cheating and forgery, I have lodged the above FIR against the Applicants. I say that I have also filed complaint under the Domestic Violence Act being CC No.215/DV/2014 before the Ld. Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai. During pendency of the said D.V. case, a settlement arrived between the parties and both the parties have

filed an Consent Terms on 13.8.2019 before the Ld. Magistrate, Railway Mobile Court, Andheri.

- 3 I say that in view of the Consent Terms filed before the Ld. Metropolitan Magistrate in C.C. No.215/DV/2014 myself hereby giving consent to quash the proceeding pending against the Applicants as agreed by me in the said Consent Terms. I further say that I myself agree to comply with the Consent Terms filed before the Court and cooperate in withdrawing the allegations/case filed against each other as recorded in the Consent Terms.
- 4 I say that I have settled all the disputes with applicants and I do not wish to pursue any legal proceedings against the Applicants in the subject matter.
- 5 I say that I shall cooperate to exonerate the Applicants from the aforesaid complaint by supporting the prayers made in the present application. I say that I have no objection for quashing the aforesaid FIR No.148/2014 dated 18.5.2014 registered with Meghwadi Police Station, Mumbai under Sections 498-A, 406, 506 r/w 34 of Indian Penal Code”

13 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further proceeding in C.C. No.1086/PW/2015 pending before the Ld. Metropolitan Magistrate, Railway Mobile Court, Andheri arising out of FIR No.148/2014 dated 18/05/2014

registered with Meghwadi Police Station, Mumbai under Sections 498-A, 406, 504 r/w 34 of Indian Penal Code, and further investigation in FIR/MECR bearing No.1 of 2019 dated 27/05/2019 registered with Kherwadi Police Station u/Sec. 420, 465, 467, 468, 471 and 34 of the Indian Penal Code in view of the Consent Terms dated 13/08/2019.

14 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 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

1 2012 (10) SCC 303

process of any court.

15 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 3 – Premkumar Sharma in Writ Petition and Respondent No.2 – Jyoti Sharma in Criminal Application are not going to support the allegations made by them in their respective FIRs and further continuation of investigation in FIRs and the proceeding pending before the concerned Court would tantamount to abuse of the process of the Court since both the Respondent No.3 – Premkumar Sharma in writ petition and Respondent No.2 – Jyoti Sharma in criminal application by way of filing their respective affidavits have clearly stated that they are not interested to pursue the allegations made in the impugned FIRs against each other and/or they would not participate in the pending proceeding before the concerned Court, and the chances of conviction of the Petitioners/Applicants 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 Court the Criminal Writ Petition and the Criminal Application deserve to be allowed, and the accordingly the same are allowed in terms of prayer clause (a). Rule in both the Criminal Writ Petition and Criminal Application is made absolute to the above⁴ extent and the Criminal Writ Petition and Criminal Application stand

disposed of accordingly.

17 We direct the parties to strictly abide by the mutual obligations as per the consent terms, breach of any terms and conditions of the Consent Terms shall be viewed seriously.

[MANISH PITALE, J]

[S. S. SHINDE , J]