

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.256 OF 2020

- 1]

Prabhavati Dayaram Kakade
Age 68 years, Occ : Home Maker
Add/at, Room No.9 Nandu Kadam
Chawl, Jiwala Pada, Kandivali (East),
Mumbai : 400101

]..... (Orig.Acc.No.1)
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]
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]
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- 2]

Jayshree Rajesh Raval
Age 46 years, Occ : Home Maker

].... (Orig.Acc.No.2)
]
]
- 3]

Rajesh Hasmukhbhai Rawal
Age 46 years, Occ : Service

Applicant No. 2 & 3 residing at
H/2, Gokul Nagar II, Thakur Village,
Kandivali (East), Mumbai : 400101

]..... (Orig.Acc.No.3)
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]
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]
]
- 4]

Suvarna Mahesh More
Age 44 years, Occ : Service
Res/at, 33/34, Dhanrade House,
D.P. Road, Grant Road (W), Mumbai

]..... (Orig.Acc.No.4)
]
]
]..... Applicants.

Versus

- 1]

Swaroopaa Santosh Kakade
Age 32 years, Occ : Service
Res/at Plot No.20, Sky Park
Colony, Bhosale Wadi, Kolhapur
Pin : 416003, Maharashtra

]..... First Informant
]
]
]
]
]
]
- 2]

The State of Maharashtra
(Through Sr. Inspector of Police
Samata Nagar Police Station)

]..... Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.184 OF 2020

Santosh Devram Kakade]
 Age 36 Years, Occ : Service]
 Permanently add/at, Room No.9,]
 Nandu Kadam Chawl, Jiwala Pada,]
 Kandivali (East), Mumbai : 400101.]
 Presently add/at, C/o, Mr. Ajay Naik]
 Kantar Global Delivery, Kalayaan]
 Centre 3rd Floor, 65 V Luna Road]
 Corner, Kalayaan Avenue, Brgy]
 Philippines]..... Applicant.

Versus

1] Swaroopa Santosh Kakade]..... First Informant
 Age 32 years, Occ : Service]
 Res/at Plot No.20, Sky Park]
 Colony, Bhosale Wadi, Kolhapur]
 Pin : 416003, Maharashtra]
]
 2] The State of Maharashtra]
 (Through Sr. Inspector of Police]
 Samata Nagar Police Station) }..... Respondents.

Dr. Samarth S Karmarkar a/w Dr. Sneha Goyal i/by Karmarkar & Associates for
 the Applicants in both the Applications.

Ms. Ashita Sinha for Respondent No.1 in both the Applications.

Mrs. Aruna Pai, APP for the Respondent No.2/State in both the Applications.

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

Reserved on : 27th JANUARY 2021

Pronounced on : 01st FEBRUARY 2021

COMMON JUDGMENT : (PER S S SHINDE, J)

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

2 Both the Applications arise from the same FIR, hence both the Applications are being disposed of by this common judgment.

3 The Applicant Nos.1 to 4 in Criminal Application No.256 of 2020 are the in-laws of Respondent No.1, and the Applicant in Criminal Application No.184 is the husband of Respondent No.1 against whom Respondent No.1 has lodged the FIR being No.98 of 2014 on 24/03/2014 for the offences punishable under Sections 498(A), 406 r/w 34 of the Indian Penal Code at Samata Nagar Police Station, Mumbai.

4 The learned counsel appearing for the Applicants and the learned counsel appearing for Respondent No. 1 jointly submits that the parties have amicably settled the dispute and to that effect consent terms have been arrived at between the parties before the Family Court at Bandra. It is also submitted by the learned counsel appearing for the Applicants that in so far as the

Applicants in Criminal Application No.256 of 2020 are concerned, the charge-sheet has been filed against them, and in so far as the Applicant No.184 of 2020, who is the husband of Respondent No.1, is concerned, the charge-sheet is not yet filed.

5 It is submitted by the learned counsel for Respondent No. 1 that it is the voluntary act of Respondent No. 1 to arrive at settlement and give consent for quashing the impugned FIR/Chargesheet.

6 This matter was on board on 27/01/2021 for hearing. At that time the 1st Respondent was present in the Court. She was identified by her advocate. When we interacted with her , she stated that it is her voluntary act 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 and Chargesheet. In support of her aforesaid statements, she has filed her affidavits in both Applications.

7 In paragraphs 3 to 8 of her affidavit filed by Respondent No.1 in Criminal Application No.256 of 2020, she has stated thus :-

“3 The matrimonial discord between me and the Applicants herein as well as my husband i.e. the Original Accused No.1 vide the said FIR, Shri. Santosh D Kakade has been

resolved and accordingly we have filed the Petition u/sec.13-B of the Hindu Marriage Act, 1955, bearing Petition No.F-3118 of 2019.

- 4 The Respondent No.1 states and submits that, no fruitful purpose would be served out if the prosecution against the Applicants is continued but on the contrary, if the prosecution against the Applicants is continued, the life of the Applicant and the Respondent No.1 will become miserable and the future will be at stake, as if it is, both the parties decided and undertake to lead the further life harmoniously and peacefully.
- 5 That, taking into consideration the future of both the parties, we have resolved the dispute amicably.
- 6 That, I have no objection, if the said Application is allowed and the case presently pending before the Ld. Metropolitan Magistrate's 17th Court at Borivali, Mumbai, bearing CC. No.2312/PW/2014 vide C. R. No.98 of 2014 dated 24/03/2014 lodged with Samata Nagar Police Station as against the Applicants herein is quashed/Set aside.
- 7 That, I am deposing this Affidavit without any force, fraud or coercion at the hands of the Applicants or any person on their behalf and I am deposing it with my free will.
- 8 I am swearing this Affidavit to support the Application of

the Applicants herein to quash the proceedings against the Applicants herein, in connection to CC. No.2312/PW/2014 pending before the Ld. Metropolitan Magistrate's 17th Court at Borivali, Mumbai."

8 In paragraph Nos.3 to 9 of her affidavit filed by Respondent No.1 in Criminal Application No.184 of 2020 she has stated thus :-

"3 The matrimonial discord between me and the Applicant has resolved and accordingly we have filed the Petition u/sec.13-B of the Hindu Marriage Act, 1955, bearing Petition No.F-3118 of 2019.

4 The Applicant state and submit that, no fruitful purpose would be served out if the prosecution against the Applicants is continued but on the contrary, if the prosecution against the Applicant is continued, the life of the Applicant and the Respondent No.1 will become miserable and the future will be at stake, as if it is, both the parties decided and undertake to lead the further life harmoniously and peacefully.

5 That, taking into consideration the future of both the parties, we have resolved the dispute amicably.

6 That, I have no objection, if the said Application is allowed and C.R. No.98 of 2014 lodged with Samata Nagar Police Station Mumbai, against the Applicant

herein is quashed/set aside.

- 7 That, I have no objection, if the LOC, if any, issued and/or pending against the above referred Applicant is set aside and disposed of accordingly.
- 8 That, I am deposing this Affidavit without any force, fraud or coercion at the hands of the Applicants or any person on their behalf and I am deposing it with my free will.
- 9 I am swearing this Affidavit to support the Application of the Applicant herein to quash the proceedings against the Applicant herein , in connection to FIR C.R. No.98 of 2014 lodged with Samata Nagar Police Station, Mumbai.”

9 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further investigation of FIR being CR No.98 of 2014 lodged by the 1st Respondent against the Applicants/Accused on 24/03/2014 for the offences punishable under Sections 498(A), 406 r/w 34 of the Indian Penal Code at Samata Nagar Police Station, Mumbai as also the proceedings in connection to CC No.2312/PW/2014 pending before the Ld. Metropolitan Magistrate, 17th Court at Borivali, Mumbai.

10 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.

11 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 1 is not going to support the allegations in the FIR and further continuation of investigation in FIR being CR No.98 of 2014 lodged by the 1st Respondent against the Applicants/Accused on 24/03/2014 for the offences punishable under Sections 498(A), 406 r/w 34 of the Indian

1 2012 (10) SCC 303

Penal Code at Samata Nagar Police Station, Mumbai as also the proceedings in connection to CC No.2312/PW/2014 pending before the Ld. Metropolitan Magistrate, 17th Court at Borivali, Mumbai would tantamount to the abuse of the process of the Law/Court. Since the Respondent No. 1 is not going to support the allegations in the FIR the chances of the conviction of the Applicants would be remote and bleak. The entire dispute arose out of matrimonial discord. In that view of the matter, both the Applications deserve to be allowed. Accordingly, the Criminal Application No.256 of 2020 is allowed in terms of prayer clause (a) and Criminal Application No.184 of 2020 is allowed in terms of prayer clauses (a) and (b), which reads thus:-

Prayer clause (a) in Criminal Application No.256 of 2020

- (a) That this Hon'ble Court be pleased to be quash and set aside CC No.2312/PW/2014 pending before the Ld. Metropolitan Magistrate's 17th Court at Borivali, Mumbai, in connection to FIR vide C R No.98 of 2014 pending against the Applicants herein registered with Samata Nagar Police Station, Mumbai.

Prayer clauses (a) and (b) in Criminal Application No.184 of 2020

- (a) That this Hon'ble Court be pleased to be quash and set aside FIR vide CR No.98 of 2014 pending against the

Applicant lodged with Samata Nagar Police Station,
Mumbai.

(b) That this Hon'ble Court be pleased to be quash and set aside the NBW and/or look-out circular, if any, pending against the Applicant herein vide said CR registered with Samata Nagar Police Station, Mumbai.

12 Rule in the both the Criminal Applications is made absolute to above extent and, both the Criminal Applications stand disposed of accordingly.

13 All concerned parties to act upon an ordinary copy of this order duly authenticated by the Court Sheristedar.

[MANISH PITALE, J]

[S. S. SHINDE , J]