

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 644 OF 2020**

1. Mohsin Mukhtar Shaikh
Age : 23 years, Address Nawad Bhai
Galli, Jhula Maidan, Bandra Plot,
Jogeshwari (East), Mumbai 400 060.
2. Sajid alias Shadab Mohammed Gaus
Shaikh
Address – Room No.A/811, Nawab
Chawl, Colaba Plot, Madarsa Rabbani
Chawl, Jhula Maidan, Jogeshwari (E),
Mumbai – 400 060.

...Petitioners

Versus

1. The State of Maharashtra
Through the Public Prosecutor's Office,
Hon'ble Bombay High Court, Mumbai
2. Mrs. Salma Tayyabali Shaikh
Age : 32 years, Occupation : Housewife
Address : Room No.786/2/2, Yusuf Ali
Chawl, Paanwali Galli, Bandra Plot,
Jogeshwari (West), Mumbai – 400 060

...Respondents

Mr. Sameer Sharif, a/w Mr. Suhail Shariff, for the Petitioners.
Ms. Smita Sonawane a/w Ms. Reena Barot, for respondent
no.2.
Mrs. S. D. Shinde, APP for the State/Respondent no.1.
Respondent no.2 present.

CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.
DATED: 18th AUGUST, 2021.

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the
consent of the Counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (“the Code”) is preferred to quash and set aside CC No.2294/PW/2016, pending on the file of the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, arising out of FIR No.193 of 2016, dated 1st June, 2016, registered at Meghwadi Police Station, Mumbai, for the offences punishable under Sections 354 and 323 read with 34 of the Indian Penal Code, 1860 (“the Penal Code”), at the instance of respondent no.2 – first informant, on the basis of the settlement of the dispute

3. The petition arises in the backdrop of the following facts:

(a) The petitioners and respondent no.2 are the residents of a slum situated at CTS No.147, Jogeshwari (East), Mumbai. On 1st June, 2016 a survey was being carried out under Slum Rehabilitation Scheme. Respondent no.2 resisted the survey, which was being carried out by the society and developer and the supporters of the survey forcibly. An altercation ensued between the rival groups. Respondent no.2 alleged that petitioners nos.1 and 2 charged upon her. Petitioner no.1 Mohsin caught hold her hand and twisted it. Petitioner no.2 Sajid pulled her *duppata* and thereby outraged her modesty. Respondent no.2 thus lodged report leading to

registration of CR No.193 of 2016 for the offences punishable under Sections 354 and 323 read with Section 34 of the Penal Code.

4. The petitioners have approached the Court with the assertions that the dispute between the petitioners and respondent no.2 has been amicably resolved. Thus, prosecution deserves to be quashed and set aside.

5. Mr. Sameer Sharif, the learned Counsel for the petitioners and Ms. Smita Sonawane, the learned Counsel for respondent no.2 make a joint statement that the applicants and respondent no.2 have settled the dispute. Respondent no.2 has filed an affidavit incorporating her no objection for quashing the said prosecution.

6. Mrs. Salma Tayyabali Shaikh – respondent no.2, the first informant, appeared before the Court. She informed the Court that she has voluntarily settled the dispute with the petitioners. There is no coercion or duress. She has filed the Affidavit out of her own volition. She admitted the contents of the affidavit and execution thereof. She was identified by Ms. Reena Barot, the learned Counsel for respondent no.2.

7. Paragraphs 2 to 5 of the Affidavit read as under:

“2. I state that the petitioners are my neighbours and known to me from last many years. I say that the said F.I.R.

was lodged in the spur of the moment and out of sheer misunderstanding. I say that thereafter, a compromise has been duly affected between me and the petitioners and we have settled the differences and disputes amicably and for that purpose I am willing to abandon my allegations.

3. I say that I don't want to prosecute or depose against the Petitioner in any Court of law as matter has been amicably settled between us.

4. I say that I do not want to further pursue with the above-mentioned F.I.R. Vide C.R.No.193 of 2016 and charge sheet bearing C.C.No.2294/PW/2016. I have no objection, if the above said FIR and charge sheet is cancelled/quashed/withdrawn.

5. I state that by masking this affidavit, I make it clear that, I have no dispute or ill-feeling with/against above-named petitioners and whatever differences/issues expressed in F.I.R. and charge sheet are no more in existence and the issue in the said complaint is clarified, settled and resolved cordially between us."

8. In the backdrop of the aforesaid submissions, statements and affirmations in the affidavit, we have perused the material on record. From the perusal of the first information report, it becomes abundantly clear that the genesis of the dispute is in the survey which was being carried out under Slum Rehabilitation Scheme. One group opposed the survey. The other insisted for survey. The incident occurred as the husband of respondent no.2 allegedly resisted the attempts to carry out the survey, despite opposition of the residents. In the melee, respondent no.2 was allegedly assaulted and criminal force was used against her with intent to outrage her modesty. Even if we take the allegations in the FIR at their face value, we are afraid to hold that the mental element of intention or knowledge to

outrage the modesty is *prima facie* made out. To add to this, respondent no.2 has categorically affirmed that the allegations were made due to sheer misunderstanding.

9. In the aforesaid view of the matter, the continuation of the prosecution may turn out to be a futile exercise. Consequent to settlement, it is very unlikely that respondent no.2 would support the prosecution and it would end in conviction. In contrast, continuation of the prosecution would put the parties to grave prejudice. It would also amount to abuse of the process of the Court.

10. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Gian Singh vs. State of Punjab and another¹***, wherein the Supreme Court has observed as under;

“61.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

1 2012 (10) SCC 303.

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 the aforesaid exposition of law, reverting to the facts of the case, it becomes evident that the dispute between the petitioners and respondent no.2, who are the residents of the same locality, has been amicably resolved. The parties have decided to bury the hatchet. Continuation of the prosecution, in these circumstances, may prove to be counter productive. Thus, to secure the ends of justice and prevent the abuse of the process of the Court, it would be expedient to quash the prosecution being CC No.2294/PW/2016.

12. Hence the following order:

: ORDER :

- (i) The petition stands allowed.
- (ii) The proceedings in Case CC No.2294/PW/2016, pending on the file of the learned Metropolitan Magistrate, Railway Mobile Court at Andheri, Mumbai, arising out of FIR No.193/2016 dated 1st June, 2016, lodged with the Meghwadi Police Station, stands quashed and set aside.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]