

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1072 OF 2021

Mr. Zubair Shakil Khan
Aged: 38, Occ: Business, Residing at
Room No. 01, Pujari Building, First
Floor, Mastan Talao, J J Marg
Bombay- 400008.

...PETITIONER

Versus

1. The State of Maharashtra
At the instance of Nagpada
Police Station.
2. Mr. Owais Abdul Razzak Shaikh
Age- 45, Occ- Business, Residing at
Memni Building, Flat No. 8 Maulana
Azad Road, Sagar Hotel, Nagpada
Bombay- 400008.

...RESPONDENTS

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Mr. Irfan Abdul Aziz for Petitioner.
Mr. Mohd. Arif Siddiqui for Respondent No. 2.
Mr. V.B. Konde-Deshmukh, APP for State.
Respondent No. 2 is present in the Court.

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

DATE : 17th MARCH, 2021.

ORAL JUDGMENT [PER S.S. SHINDE]:

. Rule. Rule made returnable forthwith and heard with the
consent of learned counsel appearing for the parties.

2. Learned counsel appearing for the Petitioner and Respondent No. 2 submits that the parties have amicably settled the dispute. The Respondent No. 2 has filed the affidavit. Paragraph 2 to 4 of the said affidavit reads as under:-

2) I state that due to some misunderstanding and in hasty situations, the said F.I.R. has been lodged against the Petitioner and that the Petitioner has also lodged a Cross F.I.R. against me under the same offences.

3) I state that both of us reside in the same area and locality since many years, therefore we are neighbours to each other and I have resolved all disputes with the Petitioner along with the intervention of our family members, family friends and colleagues as there were also some mistakes committed on my part on the day the incident took place. Therefore, I do not want to proceed against them and thus, I wish to withdraw the said F.I.R.

4) I state that I have realized my mistake which was done in a hasty situation and due to misunderstanding but now I have settled the dispute amicably with the above named Petitioner. Therefore I am no more interested to proceed with the above mentioned F.I.R. Hence, pendency of the present proceeding may result in harming and destroying the reputation of the above named Petitioner as well as myself.

3. Respondent No. 2 is present before this Court. He stated that it is his voluntary act to enter into the settlement and give consent for quashing the FIR. It is submitted that entire incident had happened due to misunderstanding.

4. Since the Respondent No. 2 is not going to support the allegations in the FIR, the chances of conviction of Petitioner is remote and bleak. Further continuation of investigation of FIR dated 6th December 2019 being C.R. No. 414 of 2019 registered at Nagpada Police Station, Mumbai for the offences punishable under Sections 324, 323, 504 of IPC, would tantamount to the abuse of the process of the Court.

5. 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

1 2012 (10) SCC 303

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.

6. In the light of discussion in foregoing paragraphs, to secure the ends of justice and prevent the abuse of the process of the law/Court, the writ petition deserves to be allowed, however, cost deserves to be imposed on the Petitioner. Hence, we pass the following order:-

ORDER

A) The writ petition is allowed in terms of prayer clause

(a), which reads as under:-

(a) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ/ order/ direction in the nature of writ calling for records and proceedings of F.I.R. dated 06th December, 2019 being C.R. No. 414 of 2019 registered at Nagpada Police Station, Mumbai lodged by the Respondent No. 2 U/s's 324, 323,504 of Indian Penal Code. After examining the legality and propriety thereof, this

Hon'ble Court be pleased to quash and set aside the said F.I.R. against the Petitioner on such terms and conditions as this Hon'ble Court may deem fit to grant in the circumstances of the case.

- B)** The Petitioner to deposit Rs. 25,000/- (Rupees Twenty Five Thousand), in the account mentioned herein below, within three weeks from today.

**Name of Bank of Account: : Children Aid Soc
Donation
Bank Account No. : 02370100005612
Bank Name : UCO Bank
Branch : Matunga Mumbai
IFSC Code : UCBA0000237**

- C)** It is made clear that this order will take effect only after depositing the aforesaid amount of cost in the account mentioned herein above.

- D)** Rule made absolute to above extent. The writ petition stands disposed of accordingly.

- E)** List the matter under the caption 'For Compliance' on 15.04.2021 for compliance of directions contained in this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)