

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.204 OF 2020

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|----|---|-----------------------|
| 1] | Mr. Nishant Vijay Ghosalkar |] |
| | Age 42 yrs. Occ – Service |] |
| | Residing at – 2501/Vasudha-B, Dosti |] |
| | Vihar, Vartka Nagar, Thane (W). |]..... Applicant No.1 |
| | |] |
| 2] | Mrs. Manda alias Neeta Vijay Ghosalkar |] |
| | Age : 65 yrs. Occ – Housewife |]..... Applicant No.2 |
| | |] |
| 3] | Mr. Vijay Balkrishna Ghosalkar |] |
| | Age : 70 yrs, Occ – Retired. |] |
| | Both Residing at - 1 st Floor, Usha Nagar Corner |] |
| | Post – Khopoli, Tal – Khalapur, |]..... Applicant No.3 |
| | Raigarh Maharashtra – 410203 |] (Original Accused) |

versus

- | | | |
|----|---------------------------------------|------------------------|
| 1] | State of Maharashtra |] |
| | (Through Vartak Nagar Police Station) |]..... Respondent No.1 |
| | |] |
| 2] | Mrs. Neha Nishant Ghosalkar |] |
| | Age : 35 yrs. Occ : Housewife |] |
| | Residing at – 2501/Vasudha-B, Dosti |]..... Respondent No.2 |
| | Vihar, Vartak Nagar, Thane (W) |] (Orig.Complainant) |

Mr. Gulestan Dubhash I/by Mr. Rahul Shelke for the Applicants.

Mr. V B Konde-Deshmukh, APP for the Respondent No.1/State

Mr. Aslam Khan for Respondent No.2.

Respondent No.2 and Applicant No.1 present through video conferencing.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 13th August 2021

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

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

2 This Criminal Application has been filed by the Applicants for the following substantial relief :-

“(a) That this Hon’ble Court be pleased to be quash and set aside the C.R. No.I-218 of 2019 registered in Vartak Nagar Police Station at Thane against the Applicants herein.”

3 The learned counsel appearing for the Applicants and the 2nd Respondent jointly submit that the parties have amicably settled the dispute and, the Applicant No.1 and the 2nd Respondent are happily staying together.

4 The 2nd Respondent has filed the affidavit. Paragraphs 1 to 7 of the said affidavit are reproduced herein under for ready reference.

“1 I say and submit that the matrimonial dispute between the Applicant No.1 and myself, has been amicably solved and settled and accordingly Consent Terms filed before the Hon’ble JMFC Court, Thane in PWDV Case No.PWDV/150/2019 and hence this affidavit is without going into merits of the F.I.R., PWDV case and matrimonial petition as the matter is amicably solved.

2 With reference to paragraph 1 of the Application under reply the same related to Complaint and proceedings. With reference to paragraph 2 the same is legal submission and it is true that Applicant and myself

amicably settled and agreed not to continue with the prosecution of the said complaint as per consent terms executed between us.

- 3 *With reference to paras 3, 4, 5, 6, 7, and 8 of the present Application under reply, I say and submit that the said paragraphs are substantially correct and it is a fact that Applicant No.1 and myself got married on 07th May, 2006 and the matrimonial dispute is now amicably solved and the consent terms dt. 06th January, 2020 in PWDV Case 150/2019 is filed in the Hon'ble JMFC, Thane.*
- 4 *With reference to para 9 and 10 of the Application under reply I say and submit that the said paragraph relates to compliance of consent terms as agreed. I say that in the said consent terms dated 06/01/2020 inadvertently due to typing error in clause/para 8 in line 4 after the words 'all the jewelry items belonging to the Applicant (respondent no.2 herein) and their son', the words, "from his mother's custody" are missing. The PWDV application is already withdrawn and to incorporate the said words in consent terms in the said proceeding is not possible now. The same, as orally agreed between Applicant No.1 and myself before my filing of this Affidavit in reply, to be treated as – the said missing words added and corrected in consent terms. The Applicant no.1 herein, as per said consent terms undertakes to comply the same by bringing all jewelry of mine and our minor son, from his mother's custody and keep it in safe custody of Bank Locker opened by me. In this background I have no objection and give my consent for quashing of the said complaint.*
- 5 *With reference to paras 11, 12, 13, 14, and 15 of the Application under reply, I say and submit that the said paragraphs are legal submissions.*
- 6 *I say and submit that as the Applicant no.1 has undertaken to comply with his part, in full spirit of the consent terms, hence, accordingly I have No objection to the Application under reply and also in allowing the prayers of the Applicants."*
- 7 *I hereunder to comply with my part of the consent*

terms, give my consent to this Hon'ble Court to pass the necessary order to quash the said criminal proceedings as the matter is amicably settled.

In the aforesaid facts and circumstances I, the abovenamed respondent no.2, do hereby give my consent for quashing of the said Criminal Case C R No.I-218 of 2019 registered at Vartak Nagar Police Station, at Thane, and I pray that this Hon'ble Court may be please to pass the necessary order accordingly."

5 Applicant No.1 and the 2nd Respondent are present before this Court through video conferencing. The parties are identified by their respective advocates. We have interacted with the Applicant No.1 and the 2nd Respondent through video conferencing. The 2nd Respondent stated that it is her voluntary act to arrive at amicable settlement and file the affidavit before this Court and, she has no objection for quashing the impugned FIR.

6 Since the 2nd Respondent has filed the affidavit joining the prayer of the Petitioner for quashing the impugned FIR and, the Applicant No.1 and the 2nd Respondent have jointly stated that in view of the amicable settlement arrived at between the parties, the Applicant No.1 and the 2nd Respondent are happily staying together, no fruitful purpose would be served by continuing the further investigation in C.R. No.I-218 of 2019 registered against the Applicants with the Vartak Nagar police station, at Thane for the offences punishable under Sections 498-A and 406 of the Indian Penal Code.

7 It is crystal clear from the averments in the affidavit filed by the 2nd Respondent that, the 2nd Respondent is not going to support the allegations in the FIR and the chances of conviction of the Applicants would be bleak and remote.

8 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.

1 2012 (10) SCC 303

9 In the light of the discussion in foregoing paragraphs and keeping in view of the exposition of law by the Supreme Court in Giansingh's case (supra), we are of the opinion that this is a fit case wherein this Criminal Application deserves to be allowed in view of the amicable settlement arrived at between the parties. Hence the following order.

10 The Criminal Application is allowed in terms prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court be pleased to be quash and set aside the C.R. No.I-218 of 2019 registered in Vartak Nagar Police Station at Thane against the Applicants herein.”

Rule is made absolute in the above terms. The Criminal Application is disposed of accordingly.

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

[N. J. JAMADAR, J]

[S. S. SHINDE , J]