

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.881 OF 2020

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|----|---------------------------------|---|-----------------|
| 1. | Vikas Sheshkant Mishra |] | |
| 2. | Sheshkant Vijaynath Mishra |] | |
| 3. | Rohit Sheshkant Mishra |] | |
| 4. | Gayatri Sheshkant Mishra |] | |
| | All residing at C/29, Ramniwas |] | |
| | Chawl, Vaibhav Nagar, Janupada, |] | |
| | Thakur Village, Kandivali (E), |] | |
| | Mumbai – 400 101. |] | ... Petitioners |

Versus

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|----|----------------------------------|---|------------------|
| 1. | The State of Maharashtra |] | |
| 2. | Sandhya Vikas Mishra |] | |
| | R/at., C/29, Ramniwas Chawl, |] | |
| | Vaibhav Nagar, Janupada, Thakur |] | |
| | Village, Kandivali (E), Mumbai – |] | |
| | 400 101. |] | Respondents |

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Mr. Vinod Utekar i/b Mr. A.S. Deshpande for the petitioners.

Mr. Ashish R. Dand for respondent No.2.

Mr. J.P. Yagnik, A.P.P. for respondent-State.

Respondent No.2 is present in the court.

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

DATED : 26TH FEBRUARY, 2021.

ORAL JUDGMENT:- [S.S. Shinde, J.]

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. Learned counsel appearing for the petitioners and respondent No.2 jointly submit that, the parties have amicably settled the dispute. Learned counsel for respondent No.2 has tendered across bar an affidavit of respondent No.2. The same is taken on record. Paragraph Nos.2 to 5 of the said affidavit in reply filed by respondent No.2 read as follows:

“2. I say that, it is true and correct that, the Petitioners and myself amicably settled the disputes and misunderstanding against each other and since September 2019, I am happily residing with my husband Shri Vikas Sheshkant Mishra. I say that at the relevant time in anger and misunderstanding I have lodged the aforesaid complaint against the Petitioner. However, later on, we have resolved the dispute and cleared all the misunderstandings.

3. I say that, I don't have any grievance against Petitioners and therefore has no any objection to withdraw and end the proceedings against the Petitioners. I say that, from the betterment of future life and to happily reside with the Petitioners I also

pray to this Hon'ble Court to quash the criminal complaint and proceedings filed by me against the Petitioners on the grounds of amicable settlement and resolution of disputes.

4. I say that, I on my own voluntarily and without any coercion, I giving my consent to quash the proceedings. I say that, I do not wish to continue proceedings arising out of FIR No.845/2018 lodged with Dahisar police station. I say that the investigation into the case is still pending and therefore no prejudice will be caused to any one if the complaint proceedings are quashed.

5. I hereby confirm that, whatever in the present affidavit is true and correct to the best of my knowledge and belief. I am filing this affidavit supporting the petition for quashing of FIR and consequential proceedings and thus hereby humbly pray to allow the said petition, in the interest of justice."

3. It is informed by learned counsel appearing for the parties that petitioner No.1 and respondent No.2 are staying together from September, 2019. Petitioner No.1 and respondent No.2 are present before this court. They have been identified by their respective lawyers. We have interacted with petitioner No.1 and respondent No.2. Respondent No.2 has stated that it is her voluntary act to give consent for quashing the impugned FIR. She has further stated that since re-union, there is no any untoward incident and she is happily staying with the petitioners.

4. Upon hearing learned counsel appearing for the parties and in view of the fact that respondent No.2 has voluntarily, without any coercion, amicably settled the dispute with the petitioners and is staying together from September, 2019 and that, respondent No.2 has voluntarily supported the prayer of the petitioner for quashing the impugned FIR, the petition deserves to be allowed.

5. The Supreme Court in the case of *Gian Singh v. State of Punjab & Anr.*¹ has held that the criminal cases having overwhelmingly and predominately 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 offences 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

¹ (2012) 10 SCC 303

settlement and compromise with the victim. It has also held that 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. Having regard to the amicable settlement arrived at between the parties and in view of the affidavit filed by respondent No.2, we are of the opinion that the chance of conviction of the petitioners is bleak and remote and, therefore, the continuation of further proceedings arising out of the said FIR would be an exercise in futility and would tantamount to abuse of process of the court.

7. In the light of the discussions in the foregoing paragraphs and in order to secure the ends of justice and to prevent the abuse of the process of the court, we are inclined to allow this petition. Accordingly, the petition is allowed in terms of prayer clause (a), which reads as under:

“a) This Hon’ble Court be pleased to issue Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order direction to there by calling for the records and proceedings of CR No.845 of 2015 registered with Dahisar Police Station, filed under u/s. 498, 406, 323, 504, 506 r/w 34 Indian Penal code dated 08th December, 2018 and

after examining the legality, validity and propriety thereof the CR No.485 of 2015 registered with Dahisar Police Station, filed under u/s 498, 406, 323, 504, 506 r/w. 34 Indian Penal code dated 08th December, 2018; quashed & set aside.”

12. Rule is made absolute in the above terms.

13. The petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)