

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.274 OF 2020

Mr. Rakesh Chandrakant Gurav]
age : years, occ : 46 years]
Indian Inhabitant,]
C-304, Sai-Prerna Apartments,]
Laxmi Nagar, Nallasopara (E),]
Dist : Thane, State : Maharashtra]..... Petitioner

versus

1] Mr. Manoj Dattaram Gurav]
age : 35 years, Occu : Pvt. Tutor]
Indian Inhabitant]
E-1/2/B/10, Sanjivani Apts]
Sector – 8, Nerul]
Navi Mumbai, Dist. Thane].....Respondent/
State Maharashtra] First Informant.
2] The State of Maharashtra]
(At the instance of VB Nagar Police]

Mr. Prashant Gurav for the Applicant.
Mr. Sameer Khedekar a/w Ms. Pratibha Pawar for Respondent No.1.
Mr. V B Konde-Deshmukh, APP for the Respondent No.2/State.
Respondent No.1 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 25th MARCH 2021

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

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

2 The Applicant has filed this Criminal Application for the following relief :-

(b) The C R No.221/2010 registered with VB Nagar Police Station, Mumbai for the offences punishable U/s. 326 r/w sec 34 of IPC and further proceedings arising out of the said FIR and pending vide CC No.2028/PW/2010 before Ld. 59th Metropolitan Magistrate's Court, at Kurla, Mumbai be quashed and set aside and the Applicant be acquitted from the said offence”

3 The learned counsel appearing for the Applicant and the learned counsel appearing for the 1st Respondent jointly submit that the parties have mutually settled the dispute. The learned counsel appearing for the 1st Respondent has tendered across the bar the affidavit on behalf of the 1st Respondent. The same is taken on record and marked as “X” for identification.

4 In paragraphs 2 to 10 of his affidavit the 1st Respondent has stated thus :-

“2 I state and submit that the contents of the present Criminal Application in para no.1-24 are true and correct.

- 3 I state and submit that I patiently thought over the present settlement and accordingly I have took my decision with my own free wish and will and thereby I have shown my desire for compounding of the offences alleged by me against the Applicant.
- 4 I state and submit that there is matrimonial dispute between myself and my wife Mrs. Mugdha Manoj Gurav and since 12/10/10 we are staying separately and that FIR was lodged by me against my brother in law i.e. the Applicant viz. Mr. Rakesh Chandrakant Gurav who happens to be cousin brother of my wife nearly 10 years ago vide C R No.221/2010 at VB Nagar Police Station, Mumbai u/s. 326 r/w section 34 of IPC.
- 5 I state and submit that since last more than 10 years we are dispute and our personal live are disturbed and have realized that we have wasted precious 10 years of our life. Hence with the intervention of respectable members from our community we have mutually decided to settle the matter where in apart from Dissolution of my marriage with Applicant's sister and monetary compensation, there involves quashing of FIR against the applicant herein above and proceedings arising from it.
- 6 I hereby agreed to withdraw all the allegations in the present C.R.No.221/2010 registered with VB Nagar Police Station, Mumbai and also agreed to withdraw all the allegations against the Applicant made in the said FIR.

- 7 I state and submit as both the parties have shown their consent for the withdrawal of the FIR and further proceeding arising out of CR No.221/2010 registered with VB Nagar Police Station, Mumbai and hence in the interest of justice the FIR No.221/2010 and further proceeding arising out of said FIR required to be quashed against the present Applicant.
- 8 I state and submit that I am read to take back all the allegations made in the CR No.221/2010 registered with VB Nagar Police Station, Mumbai and hence the continuation of the proceeding in the said FIR will be futile effort and hence liable to be quashed.
- 9 I state and submit that the continuation of the present case against the present applicant will serve no purpose and hence liable to be quashed.
- 10 I state and submit that the offences alleged against the present applicant are personal in nature and in the interest of future of all concerned I am hereby giving my free consent for compounding of the case.”

5 The 1st Respondent is present before this Court. When we interacted with him, he stated that it is his voluntary act to enter into the settlement and to give consent for quashing the impugned C R No.221/2010 registered with VB Nagar Police Station, Mumbai for the offences punishable

U/s. 326 r/w sec 34 of IPC and further proceedings arising out of the said FIR and pending vide CC No.2028/PW/2010 before Ld. 59th Metropolitan Magistrate's Court, at Kurla, Mumbai. He further stated that already the proceedings for dissolution of marriage are initiated before the learned Civil Judge Senior Division, Vasai.

6 Since the parties have amicably settled the dispute and, the 1st Respondent has joined the prayer of the Applicant for quashing the impugned C R No.221/2010 and further proceedings vide CC No.2028/PW/2010, no fruitful purpose will be served in continuing the further investigation in impugned C R No.221/2010 registered with VB Nagar Police Station, Mumbai for the offences punishable U/s. 326 r/w sec 34 of IPC and further proceedings arising out of the said FIR and pending vide CC No.2028/PW/2010 before Ld. 59th Metropolitan Magistrate's Court, at Kurla, Mumbai

7 In so far as offence under Section 326 of the Indian Penal Code is concerned, upon careful perusal of the contents of the FIR so also the accompaniments of the charge-sheet, the said offence is not disclosed, no sharp weapon is used to assault the 1st Respondent.

8 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ has held that, the criminal cases having overwhelmingly and

1 2012 (10) SCC 303

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.

9 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 1 is not going to support the allegations made in impugned FIR. Since the Respondent No.1 has joined the prayer of the Applicant for quashing the impugned FIR and the proceedings being CC No.2028/PW/2010, the chances of the conviction of the Applicant would be remote and bleak. In that view of the matter, the Criminal Application deserves

to be allowed. Accordingly, the Criminal Application is allowed in terms of prayer clause (b) which reads thus :-

(b) The C R No.221/2010 registered with VB Nagar Police Station, Mumbai for the offences punishable U/s. 326 r/w sec 34 of IPC and further proceedings arising out of the said FIR and pending vide CC No.2028/PW/2010 before Ld. 59th Metropolitan Magistrate's Court, at Kurla, Mumbai be quashed and set aside and the Applicant be acquitted from the said offence”

10 Rule is made absolute to the above extent and, the Criminal Application stands disposed of accordingly.

11 The parties shall strictly abide by the consent terms and attend each and every date fixed by the concerned Court wherein the proceedings are instituted for dissolution of marriage. The parties shall extend full cooperation for early disposal of the said proceedings for dissolution of marriage.

[MANISH PITALE, J]

[S. S. SHINDE , J]