

Mandira
Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.103 OF 2021

- | | | |
|--|---|------------|
| 1. Umang Shekher Thakker |] | |
| |] | |
| 2. Shekhar Thakker |] | |
| |] | |
| 3. Mrs.Nirmala Shekhar Thakker |] | |
| All residing at Plot No.17A, Jamnotri Society, |] | |
| Near Khodiyar Mata Temple, Navi Anjar, |] | |
| P.O. Anjar, District : Kahchh, |] | |
| Gujarat – 370110 |] | |
| |] | Applicants |

VERSUS

- | | | |
|--|---|-------------|
| 1. The State of Maharashtra |] | |
| (Through Mulund (W) Police Station) |] | |
| |] | |
| 2. Mrs.Ekta Umang Thakker |] | |
| Residing at 203, Shree Siddhi Apartment, |] | |
| Behind Bal Rajeshwar Temple, LBS Marg, |] | |
| Mulund (W), Mumbai -80 |] | |
| |] | Respondents |

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Ms.Shikhani Shah i/b Mr.S.R.Gaud for the Applicants.

Mr.Wilson K. Jaiswal for Respondent No.2.

Mrs.S.D.Shinde, APP for the Respondent/State.

Respondent No.2 present in Court.

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

DATED : 11th MARCH, 2021

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

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

M.M.Salgaonkar

2. Learned counsel appearing for the applicants and respondent No.2 jointly submit that the parties have amicably settled the dispute and to that effect, consent terms are filed in the Family Court at Bandra.

3. Learned counsel appearing for respondent No.2 has tendered across the bar, the affidavit-in-reply on behalf of respondent No.2. Same is taken on record. Para 3 of the said affidavit reads as under:-

“3. I say that, due to intervention of elder family and community members, I have settled my matrimonial dispute with all the Applicants and accordingly on 06.02.2021 consent terms came to be executed between me and Applicant No.1, some of relevant settlement terms as enumerated in such written consent terms are as under;

i) In view of the consent terms filed before the Family Court, Bandra, Mumbai, I am willing to settle my dispute with the Applicants and thereby willing to record my free consent to quash the criminal proceedings i.e. present subject FIR, as mentioned above, against all the Applicants.

ii) That, Applicant No.1 would co-operate to seek the decree of divorce from the Family Court, Bandra, Mumbai, which is already pending before the Family Court by recording his appearance and consent before the Family Court in **Petition No.F/1312/2021**.

iii) That, I will receive from the Applicant No.1 a lump-sum of **Rs.11,00,000/- (Rupees Eleven Lakhs Only)** as a full and final one-time settlement amount, through a Demand Draft/Electronic Fund Transfer in my name, which is to be paid one week prior to the passing of divorce decree by the Family Court, Bandra, Mumbai.

iv) I say that in view of settlement terms, I had already withdrawn the Domestic Violence proceedings filed before the 27th Court of Ld.Metropolitan Magistrate at Mulund, Mumbai bearing its C.C.No.84/DV/2018 on 12.02.2021 and therefore I

would not claim any maintenance and/or alimony etc. from Applicant No.1 in future by initiating any kind of proceedings.

v) After quashing of the present proceedings and obtaining the decree of divorce none of the parties would cause any interference in lives of each other and all the parties would be at liberty to lead their respective lives as per their desire.

vi) Applicants and Respondent No.2 would not seek any right and interest over the moveable and/or immovable properties and also not file any civil and/or criminal proceedings against each other.”

4. In paragraph 8 of the affidavit, it is stated that respondent No.2 is giving consent for quashing the proceedings i.e. C.C.No.522/PW/2018, pending on the file of 27th Court of Metropolitan Magistrate at Mulund, Mumbai arising out of F.I.R.bearing its C.R.No.159 of 2018 dated 20.04.2018 for offences punishable under Sections 498(A), 323, 406, 504, 506 r/w 34 of I.P.C. registered with Mulund (W) Police Station.

5. Respondent No.2 is present in the Court. She has stated that it is her voluntary act to enter into the settlement and file the consent terms before the Family Court, Bandra, Mumbai and give consent for quashing the proceeding, which is under challenge in this petition. The parties are identified by their respective counsels.

6. The Hon’ble Supreme Court in the case of **Gian Singh 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 offences arising out of

¹ 2012 (10) SCC 303

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 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.

7. Since respondent No.2 has consented for quashing the aforesaid proceeding, continuation of such proceeding would tantamount to abuse of process of the concerned Court. Respondent No.2 would not participate in the said proceeding and chances of conviction of the applicants will be remote and bleak.

8. In the light of the discussion in the foregoing paragraphs and to secure the ends of justice and to prevent the abuse of the process of the concerned court, the application deserves to be allowed.

9. The application is allowed. Rule is made absolute in terms of prayer clause (b), which reads as under :-

“b) This Hon’ble Court may be pleased to quash and set aside the criminal proceeding bearing its C.C.No.522/PW/2018 pending before the 27th Court of Ld. Metropolitan Magistrate

at Mulund, Mumbai arising out its C.R.No.159 of 2018 and FIR lodged with the Mulund (W) Police Station dated 20.04.2018 for an offence punishable u/s 498(A), 323, 406, 504, 506 r/w 34 OF I.P.C. against all the Applicants above-named, lodged at the instance of present Respondent No.2 by exercising its inherent power as provided under section 482 of the code of criminal procedure.”

10. The criminal application stands disposed of accordingly.

11. The parties shall extend full co-operation to the Family Court, Bandra, Mumbai for early disposal of the proceeding pending before the said Court. Both the parties shall attend the hearing before the Family Court, Bandra, Mumbai on the dates fixed, without any default. The parties shall strictly abide by the consent terms and any breach thereof would entail recalling of the order passed today.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)