

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1575 OF 2020

- | | | |
|----|--|---------------------------------------|
| 1] | Mr. SACHIN PRAKASH PAWAR |] |
| | Aged : 35 years, Occ : Service |] |
| | R/at :- E-8, Room No.007, |] |
| | Subhagriha Complex, Sector E, Nr. NH-3 |] |
| | Khativali, Vashind, 421601 |] |
| | Mobile No.9594461997 |] |
| | Email Id: sachinpawar007@live.com |] |
| | |] |
| 2] | Mr. SANKET PRAKASH PAWAR |] |
| | Aged : 32 years, Occ : Service |] |
| | |] |
| 3] | Mr. SUSHANT PRAKASH PAWAR |] |
| | Aged : 28 years, Occ : Student |] |
| | |] |
| 4] | Mr. PRAKASH MARUTI PAWAR |] |
| | Aged : 61 years, occ : Retired |] |
| | |] |
| 5] | Mrs. MANGALA PRAKASH PAWAR |] |
| | Aged : 55 years Occ : Household |] |
| | Petitioners No.2 to 5 R/at Room No.702 |] |
| | Krishan Kunj Apartment, Plot No.38, |] |
| | Sector-9, Kamothe, Navi Mumbai 410209 |] |
| | |]..... Petitioners/
(Org. Accused) |

versus

- | | | |
|----|--|---------------------|
| 1] | THE STATE OF MAHARASHTRA |] |
| | |] |
| 2] | THE INSPECTOR OF POLICE |] |
| | NEHRUNAGAR POLICE STATION |] |
| | |] |
| 3] | MRS. SONAM SACHIN PAWAR |] |
| | Aged : 27 years, Occ : Service |] |
| | Residing at Flat No.403, `A' Wing |] |
| | Hemawati Apartments, Sector No.7 |] |
| | Charkop, Kandivali West, Mumbai – 400067 |] |
| | |]..... Respondents. |

Mr. Dhiraj B Bansode for the Petitioners.
Smt. A S Pai, APP for the Respondent/State.
Ms. Ridhi K Thakkar for Respondent No.3.

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

Reserved on : 02nd FEBRUARY 2021
Pronounced on: 03rd FEBRUARY 2021

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 The learned counsel appearing for the Petitioners and the learned counsel appearing for Respondent No. 3 jointly submit that the parties have amicably settled the dispute and to that effect consent terms have been arrived at between the parties before the Family Court at Bandra. It is also submitted that Petitioner No.1 is the husband of Respondent No.3, Petitioner Nos.2 and 3 are the brother-in-laws of Respondent No.3, and Petitioner Nos.4 and 5 are father-in-law and mother-in-law of Respondent No.3 respectively. It is submitted that the process for obtaining divorce by mutual consent have already been begun before the Family Court, Bandra.

3 It is submitted by the learned counsel for Respondent No. 3 that it is the voluntary act of Respondent No. 3 to arrive at settlement and give

consent for quashing the impugned FIR/Chargesheet.

4 This matter was on board yesterday i.e. on 02/02/2021 for hearing. At that time the 3rd Respondent was present in the Court. She was identified by her advocate. When we interacted with her, she stated that it is her voluntary act without coercion to enter into the settlement and file the consent terms before the Family Court at Bandra. She further stated that she has no objection for quashing the impugned FIR and Chargesheet. In support of her aforesaid statements, she has filed her affidavit before this Court.

5 In paragraphs 1 to 10 of her affidavit, Respondent No.3 has stated thus :-

“1 I say that I am the Original Complainant/First Informant in offense bearing C. R. No.280 of 2018 dated 3.8.2018 lodged with the Respondent No.2 under Section 498(A), 323, 504, 506 and 406 read with section 34 of the Indian Penal Code, 1860 against the Petitioners above named.

2 I say that in the aforesaid matter charge-sheet was filed by the office of Respondent No.2 before the Learned 34th metropolitan Magistrate's Court, Vikhroli, Mumbai, and the said case has been numbered as 109/PW/2019 and the same is presently pending before the said Court.

- 3 I say that Petitioner No.1 is my husband, Petitioner No.2, 3 are my brother-in-laws, Petitioner No.4 is my Father-in-law and Petitioner No.5 is my Mother-in-law, respectively.
- 4 I say that Petitioner No.1, herein had filed a Petition bearing No.A-333 of 2019 for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 before the Ld. Family Court, Bandra, Mumbai against me. I say that during the pendency of the aforesaid Petition before the Ld. Family Court, Bandra, Mumbai, Petitioner No.1 and I decided to settle the matter amicably by converting the aforesaid Petition in to Mutual Consent Petition under section 13B of the Hindu Marriage Act, 1955 as per the terms and conditions agreed between us. Accordingly, with the help of our Advocates and Ld. Counselor of the Ld. Family Court we have drawn the Consent Terms in writing to settle all the disputes between ourselves as we have decided to reside separately in peace and in harmony. I say that the Consent Terms dated : 12/3/2020 to the effect has already been filed and verified by the Ld. Family Court, Bandra, Mumbai and we have already begun the process for obtaining divorce by mutual consent. Hereto annexed and marked as **“Exhibit A”** is the copy of the **Consent Terms dated : 12/3/2020.**
- 5 I say that the dispute between us has been settled amicably on the terms and conditions specifically and

categorically mentioned in the Consent Terms dated 12/3/2020. I confirm and admit the contents of the said Consent Terms dated : 12/3/2020, which have already been filed and verified before the Ld. Family Court, Bandra, Mumbai. I say that needless to state, therefore, I do not seek to pursue Police cases 109/PW/2019 and/or FIR being C.R. No.280 of 2018 dated 3.8.2018 lodged with the Respondent No.2 under section 498(A), 323, 504 and 506 and 406 read with section 34 of the Indian Penal Code, 1860 which is filed by me against the Petitioners herein, and which is pending before the Ld. 34th Ld. Metropolitan Magistrate's Court, Vikhroli, Mumbai.

- 6 I say that as per Consent Terms dated 3.08.2020 filed and verified before Ld. Family Court, Bandra, Mumbai the Petitioner No.1 herein, has agreed to pay me the total amount of Rs.5,40,000/- (Rupees Five Lakhs and Forty Thousand only) as full and final settlement. Thereby, as per consent terms, the Petitioner No.1 has deposited the aforesaid amount in the Ld. Family Court on 19/3/2020, which I am entitled to withdraw upon the grant of Divorce by the Ld. Family Court in Petition A-333/2019, after withdrawing the divorce petition filed by me bearing no.A-2625/2019 and DV/295/2019 pending before Ld. 24th Magistrate Court, Borivali.
- 7 I say that I withdraw all the allegations which I have made against the Petitioners, herein in the aforesaid FIR/Chargesheet. I also say that I have no other claim

against the Petitioners save and except mentioned in the Consent Terms dated 12/3/2020 and specifically and categorically mentioned above.

8 I say that considering the above I have decided not to proceed in the aforesaid FIR being C.R. No.280 of 2018 dated 3/8/2018 and Chargesheet filed in the criminal case No.109/PW/2019 before the Ld. 34th Metropolitan Magistrate Court, Vikhroli, Mumbai against the Petitioners.

9 I therefore say that **I do not have any objection** if Police case 109/PW/2019 pending before the Learned 34th Ld. Metropolitan Magistrate's Court, Vikhroli, Mumbai in the FIR being No.280/2018, before Nehru Nagar Police Station dated 3/8/2018 for offenses punishable under section 498A, 323, 504, 506 and 406 read with section 34 of Indian Penal Code, 1860 against the Petitioners is quashed by this Hon'ble Court subject to Consent Terms dated 12/3/2020.

10 I also say that this Affidavit is not being filed under any coercion or duress and is being prepared and filed willingly in view of the Consent Terms dated 26.09.2019 which has been arrived at between the Petitioner No.1 and me."

6 Since the Petitioners and the 3rd Respondent have amicably settled the dispute and the said dispute arose out of matrimonial discord, and in view

of the fact that the parties have already arrived at the consent terms filed before the Family Court, no fruitful purpose will be served by continuing the further investigation in proceedings being Charge-sheet bearing C. C. No.109/PW/2009 pending before the learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai and C.R. No.280/2018 dated 03/08/2018 registered with Nehru Nagar Police Station for the offences punishable under Sections 498(A), 323, 504, 506, 406, 34 of the Indian Penal Code.

7 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 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

1 2012 (10) SCC 303

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.

8 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 3 is not going to support the allegations made in the FIR and further continuation of investigation in Chargesheet bearing CC No.109/PW/2019 filed before the learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai and the FIR No.280/2018 dated 03/08/2018 registered with Nehru Nagar Police Station for the offences punishable under Sections 498(A), 323, 504, 506, 406 r/w 34 of the Indian Penal Code would tantamount to the abuse of the process of the Law/Court. Since the Respondent No. 3 is not going to support the allegations made in the FIR the chances of the conviction of the Petitioners would be remote and bleak. The entire dispute arose out of matrimonial discord. In that view of the matter, the writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

- (a) This Hon'ble Court be pleased to quash the said Charge-sheet bearing in CC No.109/PW/2019 (wrongly mentioned as "2009") pending before Ld. Metropolitan Magistrate, 34th Court, Vikhroli, vide C.R. No.280/2018 for alleged offenses punishable u/sec. 498(A), 323, 504, 506, 406 read with 34 of Indian Penal Code, 1860"

9 The parties to abide strictly by the Consent Terms arrived at between them. Rule is made absolute to the above extent and, the Writ Petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]