

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 348 OF 2020

1. Mr. Kazim Raza Arif Ajani
Age 34 years, Occ- Business,
Resi Add- Plot No. 273, C.A. Road,
Wardhaman Nagar, Beside Pritam Bhavan,
Bhandewadi, Bagadganj, Nagpur-440008.
2. Mrs. Rehan Arif Ajani
Age 65 Years, Occ- Housewife.
3. Mr. Mohammad Kaunain Ajani
Age 40 Years, Occ- Business.
4. Mr. Mohammad Komel Ajani
Age- 36 Years, Occ- Business.
5. Mrs. Shano Fatema Ajani
Age- 36 Years, Occ- Housewife,
Applicants 2 to 5 residing at
Chandralok Bldg, Flat No. 414,
Near Mayo Hospital, C.A. Road,
Mahatma Phule Bazar, Nagpur 440018.
6. Mrs. Naziyabanu Mustakali Merchant
Age- 58 Years, Occ- Housewife,
Permanent Add:- Flat No. G-4,
Shivranjani Apartment, Opp Pattni Plaza,
Devubagh, Takhteshwar Bhavnagar, Gujrat
364002, Current Add Amir Park Society,
Sarkhej Road, Juhapura, Ahmedabad.

...APPLICANTS

Versus

1. The State of Maharashtra
(Through Dongri Police Station).
2. Mrs. Aafrin Kazim Raza Ajani
Age- 28 Years, Occ- Housewife,

Residing At Dilkhush Mahal, 3rd Floor,
Flat No. 02, Opp. Eros Sweets, Shayda Marg,
Dongri Mumbai-09.

...**RESPONDENTS**

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Ms. Chaitra R. Pawar for Applicants.
Ms. V.V. Bhosale for Respondent No. 2.
Mr. V.B. Konde-Deshmukh, APP for State.
Mrs. Aafrin Kazim Raza Ajani, Respondent No. 2 is present.
API Mr. F.A. Bagwan, Dongri Police Station, Mubmai, present.

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

DATE : FEBRUARY 01, 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. Learned counsel appearing for applicants and Respondent No. 2 jointly submits that the parties have amicably settled the dispute and to that effect consent terms are filed before the Court of Metropolitan Magistrate 70th Court at Sewree, Mumbai. The consent terms are placed on record at Exhibit-D (Page 60).
3. The Respondent No. 2 has filed the affidavit. She is present before this Court. We have interacted with her. She stated that it is her voluntary act, without any coercion for entering into the said settlement and praying for quashing the impugned charge sheet.

4. Paragraphs No. 2 to 9 of the said affidavit reads as under:-

2. I say that I am aware that the present Applicants/Original Accused, who comprise of my husband and my in laws, have preferred present Petition before this Hon'ble Court thereby seeking quashing of the F.I.R. bearing its C.R. No. 160 of 2007 duly registered with Dongri Police Station lodged by me and the Charge sheet arising therefrom bearing C.C. No. 1337/PW 2018, as I have received copy of quashing petition and I have read the contents of the such application carefully and also understood the contents mentioned in present quashing application.

3. I **Respondent no. 2** say that Applicant and myself both have realized that there is compatibility issue and we both cannot pursue our spousal life together.

4. I am willing to settle my matrimonial dispute with the Applicants amicably, therefore now I am willing to settle all my grievances with the Applicant and I am willing to withdraw all my allegations against the Applicant, for future harmonic and peaceful life. by consenting to the quashing of the Chargesheet bearing C.C. No. 1337/PW/2018. I say that I have withdrawn the proceeding bearing no 83/DV/2018 before LD. Metropolitan Magistrate's 70th Court at Sewree, Mumbai, pursuant of filing of Consent Terms dated 2/3/2019.

5. I say that I am not willing to lead any evidence whether oral or documentary either before Police Machinery or before appropriate Court of Law in the present subject crime against the Applicants in view of amicable settlement and thereby consenting to allow the prayer made in the quashing Application.

6. I do hereby record my No-Objection for allowing the Petition preferred by the above-named

Applicantthereby quashing criminal complaint bearing its FIR No. 160/2007 duly registered with Wadala Police Station and the charge sheet bearing C.C. No. 1337/PW/2019 arising from the same.

7. I further say that as I have already received Rs. 3,50,000/-[Rupees Three Lakhs Fifty Thousand Only] from Applicantas full and final settlement amount, therefore now I have got nothing to recover from Applicant.

8. I say that I am giving my free consent for quashing of above referred proceeding with my conscious mind, free will and without any sort of pressure, coercion, fraud applied on me by any person(s). Further I am aware about the effect of the present affidavit-in-reply more specifically the F.I.R. bearing its C.R. No. 169/2018registered with DongriPolice Station and the chargesheet bearing C.C. No. 1337/PW/2019 arising therefrom may get quashed and above-named Applicant may get discharged from such case, filed at my instance for which I am consenting.

9. I say that contents of present affidavit in reply is written as per my instructions, which I read and understood the same and contents mentioned in my present affidavit-in-reply are true and correct and I am aware about the effect of such affidavit and same would be binding upon me.

5. Since the applicants and Respondent No. 2 have amicably settled the dispute and to that effect consent terms are filed before the concerned Court, no fruitful purpose would be served by continuing the further proceedings arising out of charge sheet bearing C.C. No. 1337/PW/2019 lodged with Dongri Police Station for an offence punishable under Section

498 (A), 406, 323, 504 read with 34 of IPC. The respondent no. 2 is not going to support the allegations in the FIR and further continuation of proceedings would be an exercise in futility.

6. Learned counsel appearing for applicants is handing over the demand draft to the learned counsel for the Respondent No. 2. Learned counsel appearing for Respondent No. 2 handed over the said Demand draft ,to the Respondent No. 2.

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 resolves 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

1 2012 (10) SCC 303

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.

8. In the light of discussion in foregoing paragraphs, keeping in view the settlement arrived at between the parties, consent terms filed before the Court of Metropolitan Magistrate 70th Court at Sewree, Mumbai and our interaction with Respondent No. 2, we are of the view that no fruitful purpose would be served by continuing the further proceedings of C.C. No. 1337/PW/2019 lodged with Dongri Police Station for an offence punishable under Section 498 (A), 406, 323, 504 read with 34 of IPC, which would tantamount to the abuse of the process of the Court. Therefore, to secure the ends of justice and prevent the abuse of the process of the Court, the application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clause (b). Rule made absolute on above terms. The application stands disposed of.

9. Needless to observe that the parties shall strictly abide by the consent terms filed before the concerned Court.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)