

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1261 OF 2021

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| 1] | Kunal Manilal Gada |] |
| | Age : 34 years, Occu : Business; |] |
| | Indian Inhabitant, |] |
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| 2] | Vasant Manilal Gada |] |
| | Age : 67 years, Occ : Business, |] |
| | Indian Inhabitant |] |
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| | Respondents No.1 and 2 r/a: |] |
| | Room No.2602, Mahavir Phoenix |] |
| | L. B S Road, Opposite Jain Temple |] |
| | Bhandup West, Mumbai – 400078 |] |
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| 3] | Priti Kiran Chhadva |] |
| | Age : 40 years, Occ : Business |] |
| | Indian Inhabitant |] |
| | |] |
| 4] | Kiran Vasant Chhadva |] |
| | Age : 41 years, Occ : Business |] |
| | Indian Inhabitant |] |
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| | Respondents No.3 and 4 r/a: |] |
| | Room No.103, Krushna Enclave, |] |
| | First Floor, J B Nagar, Andhri (E) |] |
| | Mumbai – 400 059 |] |
| | |] |
| 5] | Priya Vijay Furia |] |
| | Age : 35 years, occ : Business |] |
| | Indian Inhabitant |] |
| | |] |
| 6] | Vijay Nemchand Furia |] |
| | Age : 37 years, occ : Business |] |
| | Indian Inhabitant |] |
| | |] |
| | Respondents 5 and 6 r/a : |] |

Room No.203, Padmavati Nagar,
Dumping Road, Mulund (W)

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]..... Petitioners.

Versus

1] State of Maharashtra,
Through Bhandup Police Station
C/o Public Prosecutor
High Court (A.S.)

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2] Mrs. Ankita Kunal Gada
(Nee. Ms. Ankita Mahendra Dharod)
Age : 31 years, occ : Housewife,
Indian Inhabitant
R/a : 603, Parshva Villa, V. P. Road,
Mulund West, Mumbai – 400 080

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]..... Respondents.

Mr. Akshay R Pai i/by Bina Rajendra Pai for the Petitioners
Mr. V B Konde Deshmukh, APP for the Respondent No.1/State.
Mr. Prem J Gada for Respondent No.2.
Respondent No.2 present In Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 10th MARCH 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. 2 jointly submit that the parties have
amicably settled the dispute and to that effect consent terms have been filed

before the Family Court, Bandra, Mumbai. It is also submitted that Petitioner No.1 is the husband and the Respondent No.2 is the wife, and they got married on 24th January 2017. It is also submitted that the disputes between the Petitioners and Respondent No.2 have been resolved amicably. Petitioner No.2 is the mother of Petitioner No.1, and Petitioner Nos.3 and 5 are the sisters of Petitioner No.1. Petitioner Nos. 4 and 6 are the husbands of Petitioner Nos.3 and 5 respectively.

3 It is submitted that the impugned FIR being No.10 of 2019 came to be registered by Respondent No.2 against the Petitioners with the Bhandup Police Station, Mumbai for the offences punishable under Sections 498A, 406, 323, 504 and 34 of the Indian Penal Code. The Petitioners were summoned and produced before the concerned Magistrate, who enlarged the Petitioners on bail. Thereafter the police filed the Chargesheet dated 17/07/2019 before the learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai bearing No. PW/511 of 2019 against the Petitioners. Respondent No.2 filed an application under Section 12 of the Domestic Violence Act, 2005 bearing No.85/DV/18 against the Petitioners before the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai which has been withdrawn by the 2nd Respondent. Thereafter the Petitioner No.1 filed a Petition bearing No. A-1781 of 2020 in the Family Court, Bandra for dissolution of the marriage between him and Respondent No.2. It is also submitted that the Petitioner No.1 and the 2nd

Respondent have filed Consent Terms before the Family Court at Bandra executed between them wherein all the disputes and issues arising between them were amicably settled and all the allegations have been withdrawn.

4 It is submitted by the learned counsel for Respondent No. 2 that it is the voluntary act of Respondent No. 2 to arrive at settlement and sign the consent terms and give consent for quashing the impugned FIR/Chargesheet.

5 The 2nd Respondent is present in Court. The learned counsel appearing for Respondent No.2 identified the Respondent No.2. When we interacted with her, she stated that it is her voluntary act without coercion to enter into the settlement and sign the consent terms. She further stated that she has no objection for quashing the impugned FIR and Chargesheet.

6 In support of her aforesaid statements, Respondent No.2 has filed her affidavit before this Court. In paragraphs 3 to 7 of her affidavit, Respondent No.2 has stated thus :-

“3 I say that after filing of the Divorce Petition, I explored the settlement of all other disputes with the Petitioners which included alleged events and transpirations forming part of the subject matter of the said F.I.R. No.10 of 2019 and all proceedings filed pursuant thereto. It was resolved that both the parties should finalize the consent terms to such settlement talks and

the entire dispute between us to be settled by finalizing the consent terms. I have resolved to dissolve the matrimonial relationship and agreed to withdraw all allegations made against each other as well as the other Petitioners in all the proceedings filed against each other on the terms and conditions finalized by and between them as per the Consent Terms dated 16/01/2021. The Petitioner No.1 and I filed the Consent Terms dated 16/01/2021 in the Family Court, Bandra in M. J. Petition No.A-1781 of 2020.

- 4 I say that in terms of the Consent Terms, the petitioner No.1 has deposited Demand Draft worth Rs.13,50,000/- to the mediator as agreed. The said Demand Draft will be handed over to me once the Consent Terms are fully complied with and the M.J. Petition before the Family Court is finally disposed of. I also say that in furtherance of the said Consent Terms, the Petitioner No.2 and I have withdrawn our respective Applications filed before the concerned Magistrate's Court under the provisions of the Domestic Violence Act, 2005. Thus the only terms which remain to be complied with under the said Consent Terms is to approach this Hon'ble Court and have the said FIR quashed. It is in these circumstances the above Petition as well as the present Affidavit is being filed. The next date before the Family Court is 01/04/2021 and the matter has been kept for "Compliance of the Consent Terms".

- 5 I say that I have no intention to continue with the F.I.R.

No.10 of 2019 dated 06/01/20219 and/or prosecute the pending complaints. The Petitioner No.1 and myself are well educated persons from respectable families and I am not interested in carrying the matter/complaints any further. I say that due to the nature of the allegations, the said complaint cannot be compounded and/or withdrawn as the offences under the said Act are non compoundable.

6 I say that one of the terms for the settlement at Clause No.8 of the said Consent Terms dated 16/01/2021 is to approach this Hon'ble Court with a request for withdrawal/quashing by consent of the said F.I.R.

7 I therefore pray that I have no objection if the above Petition is allowed and I shall submit to the orders of this Hon'ble Court,.

7 Since the Petitioner No.1 and the 2rd Respondent have amicably settled the disputes and the said disputes arose out of matrimonial discord, and in view of the fact that the parties have already filed consent terms in the Family Court, Bandra, Mumbai, no fruitful purpose will be served by continuing the further investigation in FIR No.10 of 2019 registered with Bhandup Police Station, Mumbai for the offences punishable under Sections 498A, 406, 323, 504 and 34 of the Indian Penal Code, and the Chargesheet dated 17/07/2019 and the proceedings bearing Case PW No.511 of 2019 pending before the Ld. Metropolitan Magistrate, 53rd Court, at Mulund,

Mumbai.

8 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ 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 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. 2 is not going to support the allegations made in

1 2012 (10) SCC 303

the impugned FIR and further continuation of investigation in FIR No.10 of 2019 registered with Bhandup Police Station, Mumbai for the offences punishable under Sections 498A, 406, 323, 504 and 34 of the Indian Penal Code, and the Chargesheet dated 17/07/2019 and the proceedings bearing Case PW No.511 of 2019 pending before the Ld. Metropolitan Magistrate, 53rd Court, at Mulund, Mumbai, would tantamount to the abuse of the process of the Law/Court. Since the Respondent No.2 is not going to support the allegations made in the impugned FIR, the chances of the conviction of the Petitioners would be remote and bleak. 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), (b), (c) and (d) which reads thus :-

- (a) this Hon'ble Court be pleased issue an appropriate writ, order or direction for quashing and setting aside FIR No.10 of 2019 (at Exhibit - "A" hereto) registered and pending before the Police Station at Bhandup, Mumbai u/s. 498A, 406, 323, 504 & 34 of IPC, 1860."
- (b) this Hon'ble Court be pleased issue an appropriate writ, order or direction for quashing and setting aside prosecution of FIR No.10 of 2019 (at Exhibit - "A" hereto) registered and pending before the Police Station at Bhandup, Mumbai u/s. 498A, 406, 323, 504 & 34 of IPC, 1860."
- (c) this Hon'ble Court be pleased issue an appropriate writ,

order or direction for quashing and setting aside the said Chargesheet dated 17/07/2019 filed u/s. 173 of the Code of Criminal procedure, 1973 before the Ld. 53rd Metropolitan Magistrate's Court, Mulund, Mumbai in Police Case P.W. No.511 of 2019 (at Exhibit - "B" hereto)

- (d) this Hon'ble Court be pleased issue an appropriate writ, order or direction for quashing and setting aside Police Case P.W. No.511 of 2019 pending before the Ld. 53rd Metropolitan Magistrate's Court, Mulund, Mumbai against the Petitioners.

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

11 The parties to abide strictly by the Consent Terms filed before the Family Court, Bandra, Mumbai and shall cooperate with the Family Court, Bandra, Mumbai for deciding the proceedings before it by attending the dates fixed by the said Court.

[MANISH PITALE, J]

[S. S. SHINDE , J]