

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.212 OF 2018**

- 1] Mrs. Akshata Kartik Varman)
Hindu by religion, aged about 27 years,)
Occ: Service, Residing at – C – 20,)
Trishul Hights, Opp – Sham Sat Sang Bhavan,)
New Link Road, Ekta Nagar, Kandivali (West),)
Mumbai – 400 067.)
)
- 2] Mr. Awdhoot Baburao Bhosale,)
Hindu by religion, aged about 51 years,)
Occ : Service, Residing at – C – 20,)
Trishul Hights, Opp – Sham Sat Sang Bhavan,)
New Link Road, Ekta Nagar, Kandivali(West))
Mumbai – 400 067.)
)
- 3] Mrs. Abhinetree Awdhoot Bhosale)
Hindu by religion, aged about 47 years,)
Occ: Housewife, Residing at – C – 20,)
New Link Road, Ekta Nagar,)
Kandivali (West), Mumbai – 400 067.)
)
- 4] Mr. Prathamesh Awdhoot Bhosale,)
Hindu by religion, aged about 24 years,)
Occ: Working, Residing at – C – 20,)
Trishul Hights, Opp – Sham Sat Sang Bhavan,)
New Link Road, Ekta Nagar, Kandivali(West))
Mumbai – 400 067.)Applicants

V/s

- 1] Mr. Kartik Ashok Kumar Varman,)
Hindu by religion, aged about 32 years,)
Occ: Service, Residing at – B/3, A/201,)
Arked Art, Vinay Nagar, Mira Road (E),)

Mira Road Thane Gramin, Maharashtra,)
India) Respondent No.1

2] State of Maharashtra)
(Through Mira Police Station)) Respondent No.2.

**ALONGWITH
CRIMINAL APPLICATION NO.58 OF 2021**

1] Kartik Ashok Kumar Varman)
Adult, Indian Inhabitant, Aged about 35 years)
Occ: service)
)
2] Nisha Ashok Varman,)
Adult Indian Inhabitant,)
Aged about 58 years,)
Occu: Housewife.)
)
3] Sashank Ashok Kumar Varman,)
Adult Indian Inhabitant,)
Aged about 32 years,)
Occ: Service.)
)
All residing at A-201, Building 3, Arkade)
Art, Vinay Nagar, Mira Road (E),)
Thane – 401107) Applicants.

V/s

1] The State of Maharashtra)
Through Police Station Officer,)
Mira Road (E), Thane.)
)
2] Akshata Kartik Varman,)
Adult Indian Inhabitant,)
aged about 32 years, Occu: Service,)
Residing at C- 204, Trishul Heights,)
Opp – Sham Sat Sang Bhavan,)
New Link Road, Ekta Nagar,)

Kandivali (West), Mumbai – 400 067.) Respondents.

Ms. Sana H. Shaikh i/b Ms. Sarika Mhatre for the Applicant in APL/212/2021 & for Respondent No.1 in APL/58/2021.

Mr. Kamran I. Shaikh for Applicant in APL/58/2021 and for Respondent No.2 in APL/212 of 2018.

Ms. Akshata Kartik Varman Respondent No.2 in APL/58/2021 present through VC.

Mr. J.P. Yagnik, APP for State.

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

DATE: APRIL 22, 2021

ORAL JUDGMENT: (Per Manish Pitale, J.)

1] Heard.

2] Rule. Rule is made returnable forthwith. Applications are taken up for final hearing by consent of parties.

3] These are applications filed by the Applicants seeking quashing of FIRs registered against them by invoking power of this Court under Section 482 of the Criminal Procedure Code. FIRs in question are cross cases registered by the Applicants against each other, genesis of which is matrimonial discord between Applicants, who are husband and wife.

4] It appears that due to matrimonial discord, Applicant-wife in Criminal Application No.212 of 2018 caused a FIR to be registered against her husband i.e. Applicant in Criminal Application No.58 of 2021 and others for offences punishable under Sections 498A, 406, 504, 506 of the Indian Penal Code. Similarly, Applicant-husband in Application No.58 of 2021 caused a FIR to be registered against his wife i.e. Applicant in Criminal Application No.212 of 2018 and others for offence punishable under Section 380 of the Indian Penal Code.

5] During the course of investigation in the said FIRs, parties decided to amicably settled their dispute and to apply for divorce by mutual consent before the Family Court at Bandra. In the said Petition, in terms of the amicable settlement between the parties, consent terms were recorded under which husband i.e. Applicant in Criminal Application No.58 of 2021 agreed to pay an amount of Rs 14,45,000/- to his wife i.e. Applicant in Criminal Application No.212 of 2018 and on other terms mutually agreed between them, so that the dispute could be put at rest finally.

6] Parties have also filed affidavits in these Applications stating that

they shall abide by consent terms placed on record before the Family Court at Bandra and therefore Applications may be allowed and the FIRs may be quashed.

7] We have perused the affidavits placed on record, as also the consent terms. It is also informed that next date before the concerned Court at Bandra is 26th April, 2021 when parties would be taking necessary steps for decree of divorce by mutual consent.

8] Applicant-wife in Criminal Application No.212 of 2018 is present before us through video-conferencing and she confirms the statements made in her affidavit and the fact that parties have amicably settled their *inter se* dispute, submitting that the FIRS may be quashed. The learned Counsel for the husband has supported the statements made on affidavit in the Application and therefore, we find that the parties have made joint prayer for quashing of the two FIRs.

9] The Hon'ble Supreme Court in the case of *Giansingh v. State of Punjab and Another*, reported in **(2012) 10 SCC 303** has held that, the criminal cases having overwhelmingly and pre-dominantly 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.

10] We have perused the contents of the affidavits filed by the parties in the said Criminal Applications and we have also perused the consent terms that are filed in Criminal Application No.212 of 2018.

11] In fact, the consent terms stated in the Petition for divorce by mutual consent before the Family Court at Bandra are elaborate and they bring out the exact terms of settlement between the parties.

Hence, the said terms are reproduced hereinbelow: -

“a. The Petitioner No.1 states that she has received from the Petitioner No.2 all her belongings, valuables and Streedhan and also all items, clothing and valuables of daughter Daanya Kartik Varman have been received from the Petitioner No.2 and his family and nothing belonging to the Petitioner No.1 or daughter Daanya is in possession or custody of the Petitioner No.2 or his family.

b. The Petitioner No.1 agrees that the Petitioner no.2 shall not have access of the minor daughter Daanya Kartik Varman and Petitioner no.2 agreed the same.

c. The Petitioner No.1 further states that she has now and in future no claim of any nature whatsoever in respect of any gold ornaments, valuables, clothes, other valuable articles, streedhan or property both

movable and immovable. Further, all the issues pertaining to money and valuable articles are amicably resolved between both the Petitioners.

d. That the Petitioner No.2 shall give a lump sum amount of Rs 14,45,000/- (Rs. Fourteen Lakhs and Forty Five Thousand only) as Permanent and Final Alimony and towards the care and nurturing of daughter Daanya Kartik Varman.

e. That amount of Rs 14,45,000/- mentioned in the aforesaid para is in addition to the earlier already given amount of Rs 30,000/- (Rs Thirty Thousand only) by the Petitioner No.2 to the Petitioner No.1.

f. That, thus the total amount of Rs 14,75,000/- (Rs. Fourteen Lakhs and Sevety Five Thousand only) mentioned in Para (c) and (d) is towards all the past present and future maintenance expenses, shelter, alimony, care etc of both the Petitioner No.1 and daughter Daanya Kartik Varman.

g. That it is not in dispute that an amount of Rs 30,000/- as mentioned in para (d) has already been paid to the Petitioner No.1 by the Petitioner No.2 as follows:

- i. Rs 10,000/- on 25th June' 19 by NEFT in the account of Petitioner No.1's IDBI Bank A/C no. 1000104000178624;
 - ii. Rs 10,000/- by Kotak Mahindra Bank cheque no. 000004 dated 13th July' 19;
 - iii. Rs 10,000/- on 21st Aug' 19 by NEFT in the bank account of the Petitioner No.1's IDBI Bank A/C no.1000104000178624.
- h. That the schedule of payment of the amount of Rs 14,45,000/- as mentioned in the aforesaid paragraph (c) is as follows:-

1. The Petitioner No.2 shall deposit amount of Rs 1,45,000/- (Rupees One Lakh Forty Five Thousand Only) in the Hon'ble Family court, Bandra by way of Demand draft in favour of 'PRINCIPAL JUDGE FAMILY COURT, MUMBAI' on the date of first hearing of the Mutual Consent Divorce Petition and the receipt for the same shall be handed over to the Petitioner No.1 immediately. The said amount of Rs 1,45,000/- (Rupees One Lakh and Forty Five Thousand Only) can be withdrawn by the

Petitioner No.1 ONLY after obtaining the Divorce Decree as per agreed terms herein.

2. The Petitioner No.2 shall deposit the balance amount of Rs 13,00,000/- (Rupees Thirteen Lakhs only) in the registry of Hon'ble Family Court, Bandra by way of Demand draft on the date of grant of Divorce. The Petitioner No.2 should be given sufficient time and prior intimation about the date of grant of divorce for him to make the demand draft. That the Petitioner No.1 shall be able to withdraw the said amount of Rs 13,00,000/- (Rs. Thirteen Lakhs only) only after the Decree for Divorce by Mutual Consent is obtained from the Hon'ble Family Court.

3. that it is made clear that the Petitioner No.1 will not withdraw nor make applications for withdrawal of the amount of Rs 1,45,000/- (Rupees One Lakh and Forty Five Thousand Only) or Rs 13,00,000/- (Rupees Thirteen Lakhs Only) deposited in the Registry of the Hon'ble Family Court prior to obtaining the Decree of Divorce by Mutual Consent from the Hon'ble Family Court.

4. Further, as per agreed terms if the Petitioner No.2 fails to deposit the demand draft of Rs 13,00,000/- (Rupees Thirteen Lakhs only) in the Hon'ble Family Court, the Petitioner No.2 will be liable to pay a penalty of Rs 5,00,000/- (Rs. Five Lakhs only) to the Petitioner No.1.

i. That it is agreed between the parties that if the Petitioner No.1 remains absent or fails to appear on the dates given by the Hon'ble Family Court or Refuses to proceed with the Application for Divorce by Mutual Consent or Appeals against the Divorce by Mutual Consent after it is granted or Re-opens any of the cases and /or complaints against the Petitioner No.2 and / or his family & relatives, then the Petitioner No.1 will have to return every amount received from the Petitioner No.2 / Hon'ble Family Court to the Petitioner No.2 along with the penalty amount of Rs 5,00,000/- (Rupees Five Lakhs Only) within 07 days.

j. The Petitioner No.1 accepts that she is already in possession of all her Streedhan and daughter Daanya's ornaments.

k. That it is not disputed between the parties that the female issue, Miss. Daanya Kartik Varman has been in permanent custody of the Petitioner No.1 since 15th April, 2016.

l. That it is agreed between the parties, that the permanent custody of Miss. Daanya Kartik Varman will be with the Petitioner No.1 after Mutual consent divorce.

m. That the Petitioner No.1 and daughter Miss Daanya Kartik Varman will never claim any expenses from Petitioner No.2 or any of his family members and relatives.

n. The Petitioner No.1 and/or daughter Daanya Kartik Varman hereby forego all their nomination, beneficiary, ownership, legal heir accession rights etc. to anything and everything belonging to the Petitioner No.2 and his family or acquired by them in their life time including but not restricted to any kind of money, emoluments, investments, dividends, wealth, moveable / immovable property, assets, insurance, deposits, accounts, Govt. / Private Funds, Bonds, bonus, retirement / death benefits, etc.

o. That the Petitioner No.1 and female issue Miss

Daanya Kartik Varman will also not claim any further compensation / expenses / maintenance / right to property / shelter / Streedhan of whatsoever nature after receipt of the amount of Rs 14,45,000/- (Rupees Fourteen Lakhs and Forty Five Thousand Only) from the Petitioner no.2 which would constitute the final part of the full and final settlement value of Rs 14,75,000/- (Rupees Fourteen Lakhs and Sevety Five Thousand only)

p. That the Petitioners within 01 month of filing this Application for Divorce by Mutual Consent shall withdraw all cases and complaints filed by them against each other and their family members.

i. The Petitioners shall inform in writing to the Mira Police Station about the filing of the Application for Divorce by Mutual Consent and shall request the concerned police station to not proceed further with the investigation against them in FIR No.11/2018, FIR No.38/2018 and other such FIRs, NCs and complaints filed by them against each other and their families.

ii. The Petitioners shall withdraw all Cases,

FIRs, NCs and complaints filed by them and their families against each other and their respective families from all respective courts, police stations, investigating agencies, professional / social institutions or otherwise

iii. The Petitioners and/or their respective family members will neither file any further complaints / cases against the other and/or their respective family members nor will they participate in any proceedings of the police, court or any social/professional institution against the other and/or their family members.

iv. The Petitioners shall withdraw their police complaints against each other and their respective families and shall give their no objection for quashing of the FIRs against each other and their respective families.

v. The Petitioner No.1 shall give her 'No Objection' to quashing of FIR No.38/2018 registered with the Mira Road Police Station against the Petitioner No.2 and his family and any other such FIRs registered by her against

the Petitioner No.2 and his Family, in the event the Petitioner N.2 moves an application before the Hon'ble High Court or any other courts of law for the same.

vi. That in the event, the Petitioner No.2 moves an application for quashing of the FIR registered against him and his family members before the Hon'ble High Court, the Petitioner No.1 shall appear in person or through her lawyer and give her no objection for quashing of the FIR filed by her against the Petitioner No.2 and his family.

vii. That the Petitioner No.2 shall also give his no objection for quashing of the FIR No.11/2018 registered by him against the Petitioner No.1 and shall appear in person or through his lawyer for the same.

viii. That the Petitioner No.1 shall withdraw the case filed by her u/s 12 of the Protection of Women from Domestic Violence Act vide CC No.258/DV/2016 before the Ld. Metropolitan Magistrate's 24th Court, Borivali and shall also withdraw all such cases filed by her before any court of law or any other

agencies.

ix. That subsequently the Petitioner No.2 shall withdraw the Criminal Appeal No.176/2018 filed by him against the Petitioner No.1 in the Hon'ble Sessions Court No.9, Dindoshi.

x. That the Petitioner No.2 shall withdraw all such other cases filed by him if any against Petitioner No.1 before any court of law.

xi. That both parties shall assist and co-operate with each other in their respective proceedings for quashing of the FIRs and withdrawal of cases /complains.

q. That the Petitioners have a joint bank account having number 2511532148 (Customer ID: 84062554) with Kotak Mahindra bank, Latif Park branch, Mira Road (E). That the petitioners agree to close the joint account and any balance lying in the said joint bank account shall belong to the Petitioner No.1.

r. That the Petitioners would jointly file an application before the Hon'ble Family Court or any other

court of law for waiver of the cooling-off period of 6 months in the said Application for Divorce by Mutual Consent.

s. That after the Decree of Divorce by Mutual Consent is granted by the Hon'ble Court, neither the parties nor will their family members interfere in each other's life or cause any harm to each other's image and well-being.

t. That the Petitioners agree that neither them nor their family members shall have any grievances with each other and will not lodge any complaint, civil or criminal, against each other.

u. That in the event either of parties decide to marry again after the decree of the divorce is granted, the other party shall not try to establish contact with them, their partners, their family members etc. or influence them in any way.

v. That it is needless to mention that if either of the party fails to comply with these consent terms then the aggrieved party shall be entitled to re-open all the withdrawn complaints/FIR/cases filed by them. Also, the party not complying with the consent terms or refusing to proceed with the divorce or appealing against the

divorce after it is granted will be liable for suitable legal action and a penalty amount of Rs 5,00,000/- (Rupees Five Lakhs Only) to the other party and the whole agreement between both parties would stand cancelled thereby ensuring that any payments made / amounts transferred as part of this agreement shall be refunded to the concerned party along with the penalty amount of Rs 5,00,000/- (Rupees Five Lakhs Only) within 07 days.”

12] Applying the ratio of the law laid down by the Hon’ble Supreme Court in the case of *Giansingh* (supra), we find that present applications deserve to be allowed, particularly because the informants in the two FIRs i.e. husband and wife who have initiated cross cases against each other are not likely to support the allegations and therefore, the possibility of conviction is extremely bleak. Even otherwise, we find that allegations regarding offence under Section 380 of the Indian Penal Code levelled against the wife and other accused persons are not enough to demonstrate prima facie ingredients of the said offence. Since the offences alleged against the husband and others who are Applicants in Criminal Application No.58 of 2021, are essentially arising out of the matrimonial discord between husband and wife, we are inclined to allow the present Applications.

13] Accordingly, Criminal Application No.212 of 2018 is allowed in terms of prayer clause (a) which reads as under:-

“(a) This Hon’ble Court may be pleased to quash the F.I.R. No.11/2018 registered with Mira Road Police Station, u/s. 380 I.P.C. by the Respondent No.1 Mr. Kartik Kumar Varman.”

14] Criminal Application No.58 of 2021 is allowed in terms of prayer clause (a) which reads as under: -

“a) Quash the FIR vide CR No.38/2018 dated 02.02.2018 with the Mira Road Police Station, Dist. Thane u/s 498A, 406, 504, 506 IPC against the Applicant, his mother and his brother.”

15] Both these Criminal Applications accordingly stand disposed of.

16] It is clarified that if parties do not abide by the aforementioned consent terms, the present order quashing the FIRs shall stand recalled.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)