

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.373 OF 2020

- 1]

Mr. Ritesh Rajesh Kumar Srivastava  
Adult, Indian Inhabitant, Occ : Advocate  
Aged about 31 years

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- 2]

Mr. Rajendra Prasad Srivastava  
Adult, Indian Inhabitant, Occ : Retired  
Aged about 72 years,

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- 3]

Mr. Rajesh Kumar Srivastava  
Adult, Indian Inhabitant, Occ : Business  
Aged about 52 years,

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- 4]

Smt. Rajni Rajesh Kumar Srivastava  
Adult, Indian Inhabitant, Occ : Housewife  
Aged about 45 years,

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- 5]

Miss Priya Rajesh Kumar Srivastava  
Adult, Indian Inhabitant, Occ : Service  
Aged about 24 years,

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- 6]

Mr. Shailesh Kumar Srivastava  
Adult, Indian Inhabitant, Occ : Advocate  
Aged about 50 years,

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- All residing at House No. 19, Pocket-D-11  
Sector-8, Rohini, Delhi-110085

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]..... Applicants

versus

- 1]

State of Maharashtra  
At the instance of Borivili Police Station  
Mumbai

]
- 2]

Ms. Akansha Varma  
Adult 58 years, Indian Inhabitant  
Occupation – Business  
Residing at 402, Reis Magoes,  
R.C.Patel Road, Borivili (West)  
Mumbai

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].....Repondents.

Mr. R Satyanarayanan for the Applicants.  
Mrs. S D Shinde, APP for the Respondent/State.  
Ms. Akansha Sharma – Respondent No.2 in person present.

CORAM : S. S. SHINDE,  
N. J. JAMADAR, JJ

DATE : 06<sup>th</sup> August 2021

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

1 Rule. Rule made returnable forthwith and heard with the consent of the learned counsel for the Applicants and the Respondent No.2 who appears in person.

2 This application is filed for the following relief

*(a) That the present application be allowed and Criminal Case bearing No.3427/PW/2016 presently pending on the files of Learned Metropolitan Magistrate's 26<sup>th</sup> Court at Borivili, Mumbai for offence under section 498A, 406, 323, 504, 506(II) r/w 34 Indian Penal Code, 1860 be quashed."*

3 The learned counsel appearing for the applicants and the 2<sup>nd</sup> Respondent, who appears in person, jointly submit that the applicants and the 2<sup>nd</sup> Respondent have amicably settled the dispute and applied for divorce by mutual consent before the Family Court at Rohini, Delhi.

4           The 2<sup>nd</sup> Respondent is present before this Court through video conferencing. We have interacted with her. She stated that it is her voluntary act to enter into the amicable settlement with the applicants and apply for divorce by mutual consent. She stated that the averments made in the affidavit are in consonance with the amicable settlement arrived at between the parties. She further stated that she has received the amount mentioned in the affidavit and balance amount will be received at the time of disposal of divorce petition. She stated that she has no objection for quashing the proceedings i.e. Criminal Case bearing No.3427/PW/2016 pending on the files of Learned Metropolitan Magistrate, 26<sup>th</sup> Court at Borivili, Mumbai for offences punishable under section 498A, 406, 323, 504, 506(II) r/w 34 Indian Penal Code, 1860.

5           Paragraphs 2 to 4 of the affidavit of 2<sup>nd</sup> Respondent read as under :-

*“2 The chargesheet was filed by Borivali Police Station and said matter is pending in the court of 26<sup>th</sup> Court Borivali Case No.3427/PW/2016.*

*3 I say that the above matter has been settled out of court and the applicant hereinabove has settled for a total consideration for an amount of Rs.5,50,000/- to be given to the respondent out of which an amount of Rs.1,75,000/- already paid to me and the remaining amount of Rs.3,75,000/- out of which an amount of Rs.2,40,000/- will be paid at the time of order allowing quashing of both the criminal cases as mentioned in the MOU in para No.B/3 at page No.3. I say that the remaining amount of Rs.1,35,000/- will be paid by the*

*applicant to the respondent as the time of disposal of divorce petition.*

4 *I record my consent for the settlement and record my no objection if I withdraw my complaint against my husband and others.”*

5 Since the parties have amicably settled the dispute and the 2<sup>nd</sup> Respondent has no objection for quashing the impugned FIR and Criminal Case No.3427/PW/2016, no fruitful purpose will be served by continuing the further proceedings i.e. Criminal Case bearing No.3427/PW/2016 pending on the file of Learned Metropolitan Magistrate, 26<sup>th</sup> Court at Borivili, Mumbai for offences punishable under section 498A, 406, 323, 504, 506(II) r/w 34 Indian Penal Code, 1860.

6 The Supreme Court in the case of Giansingh v. State of Punjab and Another<sup>1</sup> 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

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1 2012 (10) SCC 303

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.

7            Since the Respondent No.2 is not going to support the allegations in the FIR, the chances of conviction of the Applicants would be remote and bleak. In order to prevent the abuse of the process of the Court and to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and the Criminal Case bearing No.3427/PW/2016 pending on the file of Learned Metropolitan Magistrate, 26<sup>th</sup> Court at Borivili, Mumbai for offences punishable under section 498A, 406, 323, 504, 506(II) r/w 34 Indian Penal Code, 1860.

9            In that view of the matter, the Criminal Application deserves to be allowed and the same is allowed in terms of prayer clause (a). Rule made absolute in the above terms. The Criminal Application stands disposed of.

**[N. J. JAMADAR, J]**

**[S. S. SHINDE , J]**