

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1462 OF 2020

Mandira
Salgaonkar

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|----|------------------------------------|-----|--------------------|
| 1. | Mr.Mohammed Alam Ansari; |) | |
| | Age : 33 years, Occ- Service |) | |
| | |) | |
| 2. | Mrs.Rukhsana Aslam Ansari; |) | |
| | Age : 51 years, Occ-Housewife |) | |
| | |) | |
| 3. | Mr.Arshad Aslam Ansari; |) | |
| | Age : 31 years, Occ-Service |) | |
| | |) | |
| 4. | Mr.Rizwan Aslam Ansari; |) | |
| | Age : 30 years, Occ-Service |) | |
| | All residing a 24/166, Nizamuddin |) | |
| | Building, Pipe Road, Kurla (West), |) | |
| | Mumbai-400070 |).. | Petitioners |

Versus

- | | | | |
|----|--|------|--------------------|
| 1. | The State of Maharashtra through |) | |
| | Sr.Inspector of Police, MIDC Police |) | |
| | Station, |) | |
| | |) | |
| 2. | Sabiya Mohammed Alam Ansari |) | |
| | Aged : 30 Years, Occ-Nil, |) | |
| | Residing at Room No.981, Sagbag |) | |
| | Chawl, Near BMC School, Marol, |) | |
| | Andheri (East), Mumbai – 400 059 |) .. | Respondents |

...

Mr.Abdul Rab Shaikh for the Petitioners.

Mr.A.Salim Shaikh for Respondent No.2.

Respondent No.2 present in Court.

Dr.FR.Shaikh, APP for Respondent No.1/State.

M.M.Salgaonkar

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

DATED : 09th FEBRUARY, 2021

ORAL JUDGMENT [PER S.S.SHINDE,J]

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, heard finally.

2. Pursuant to the notices issued, respondent No.2 has caused appearance through her counsel and filed the affidavit. It is submitted by the learned counsel appearing for the petitioners and respondent No.2 that parties have amicably settled the dispute. Therefore, it is submitted that in view of the said settlement, impugned FIR and charge-sheet be quashed.

3. Respondent No.2 is present before this Court. She stated that it is her voluntary act to enter into settlement and file affidavit before this Court. She stated that she has no objection for quashing the impugned FIR and charge-sheet.

4. Para Nos.2 to 6 of the affidavit of respondent No.2 read as under :

“2. I say that till the period of matrimonial life we both tried our level best to continue with our marriage, however, due to the differences in our temperaments our relations went strained. I say that I lodged an FIR bearing no.204 at MIDC Police Station dated 16.05.2017 under sections 498(A), 323, 504 and 34 of the Indian Penal Code, 1860 against the

petitioners in the present petition which is now pending before the file of Learned Metropolitan Magistrate's 22nd Court, Andheri, Mumbai vide C.C.No.2241/PW/2017.

3. I say that I had also filed an application u/s. 12 of Domestic Violence Act, 2005, the same is pending before the Ld. Metropolitan Magistrate's 51st Court at Kurla, Mumbai bearing no. 175/DV/2017 and the same is withdrawn on settlement. I further say and submit that the petitioner no.4 has filed an application against me which is pending before the Ld.Metropolitan Magistrate's 51st Court at Kurla, Mumbai bearing no.787/misc/2019.

4. I say that after the intervention of the respected persons, the dispute between myself and the petitioners are completely resolved and settled on the condition that the petitioner no.1 shall pay to me and my child a lumpsum maintenance of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) which is agreed upon by me and the petitioners herein. The said amount of lumpsum and full and final maintenance is partly paid in the following manner :

(a) Demand Draft of Rs.2,00,000/- (Rupees Two Lakhs only) at the time of executing consent terms and divorce by khula. Accordingly I have received the Demand Draft of Rs.2,00,000/- on 11.03.2020 and a Consent Declaration and Khulanama Divorce is signed and executed amongst myself and petitioner no.1.

(b) The petitioner no.1 has hand over to me the second demand draft of Rs.50,000/- (Rupees Fifty Thousand Only) at the time of withdrawal of my application under the Domestic Violence Act by me.

(c) The petitioner no.1 will hand over to me the last demand draft of Rs.1,00,000/- (Rupees One Lakh Only) at the time of quashing of FIR registered by me and upon my consent to quash the same.

5. I say that the petitioner no.4 has undertaken to withdraw the complaint filed by him against me as mentioned above. I say that the dispute between myself and the petitioners have been completely settled and resolved and there is nothing

more due or payable by and between me and the petitioners. Further as the dispute is completely and amicably settled, I have no grievance against the petitioners. I have no objection if the prayers of the petitioners are granted and the criminal proceedings quashed.

6. I say that I have no objection and extend my unconditional consent for grant of the prayers of the petitioners and in view of our complete settlement of matrimonial dispute this Hon'ble Court be pleased to Quash and set aside the criminal case bearing C.C.No.2241/PW/2017 emanating out of FIR No.204 of 2017 registered on 16.05.2017 at the MIDC Police Station now pending before the file of Learned Metropolitan Magistrates 22nd Court, Andheri, Mumbai.”

5. It is stated by respondent No.2 that she has received the entire amount i.e. Rs.3,50,000/- from petitioner No.1. Since the parties have amicably settled the dispute, no purpose will be served by continuing the further proceedings arising out of Crime No.204 of 2017 registered on 16th May, 2017 at MIDC Police Station, under Sections 498A, 323, 504 and 34 of the Indian Penal Code.

6. The Supreme Court in the case of Gian Singh 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 offences 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

¹ 2012 (10) SCC 303

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 has also held that 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 petitioners and respondent No.2 have amicably settled the dispute, we are inclined to allow this petition as respondent No.2 is not going to support the allegations in the impugned FIR and chance of conviction of the petitioners would be bleak, and therefore, continuation of further further proceedings, would be an exercise in futility and would tantamount to abuse of process of the Court.

8. In that view of the matter, to secure the ends of justice and to prevent the abuse of the process of the Court, the petition deserves to be allowed. Accordingly, the writ petition is allowed in terms of prayer clause (a), which reads as under :

“(a) This Hon’ble Court be pleased to issue an appropriate writ order, direction or any other appropriate order thereby quashing and setting aside Criminal Case No.2241/PW/2017 pending before the Ld. Metropolitan Magistrate’s 22nd Court at Andheri, Mumbai arising out of the impugned FIR No.204 of 2017 filed at MIDC Police Station u/s.498(a), 323, 504 and 34 of IPC holding the same liable to be quashed and set aside in view of settlement between the parties and in the interest of justice, equity and good conscience;”

8. Rule is made absolute in above terms. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)