

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 259 OF 2021

Dr. Kunaal Kiran Shinde & Ors. ..Applicants.
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Rohit Shaligram for Applicants.
Mr. Mohit Bharadwaj for Respondent No.2.
Mr. J. P. Yagnik, APP for State/Respondent No.1.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 21 DECEMBER 2021

P.C. :

. Heard the learned counsel for the parties.

2. The Application is filed for the following prayer:

“A. The Hon’ble Court may kindly quash FIR bearing No.413/2020 dated 28/12/2020 lodged u/s 498A, 504, 406, 506 r/w 34 of the Indian Penal Code, 1860 registered by the respondent against the Applicant Nos.1 to 3.”

3. The Applicant No.1 is the husband of the Respondent No.2. The Applicant Nos.2 and 3 are father-in-law and mother-in-

law of the Respondent No.2. The Applicant No.1 and the Respondent No.2 got married on 8 January 2017. The Applicants and the Respondent No.2 are Doctors by profession.

4. The Respondent No.2 filed an F.I.R. under sections 498A, 406, 504 and 506 r/w. 34 of the Indian Penal Code, alleging that she was subjected to physical and mental cruelty and demands of dowry. The Application was filed to quash the F.I.R. on merits.

5. During the hearing of this Application the matter, by consent, was referred for mediation. The report of learned Mediator has received and it is stated that the mediation has been successful. The mediation report is signed by all the parties and the Memorandum of consent reads thus:

MEMORANDUM OF CONSENT TERMS

1. *The applicants submit that the above captioned matter the parties agreed to refer the matter for mediation and accordingly the mediation was held at mediator's office and the dispute was settled in following terms.*
2. *That the applicant no. 1 husband has paid Rs. 19,00,000/- (Rs. Nineteen lacs Only) through demand draft issued by Axis Bank bearing no. 004284 dated 17.12.2021 in favour of the respondent no. 2 wife on 20th December 2021 towards her full and final lump sum maintenance/permanent alimony and/or for her residence*

3. *The Applicants have on 20th December 2021 returned to the Respondent No. 2 the gold ornaments consisting of a Gold Chain, Gold Bracelet and Gold Ring, gifted by the respondent no. 2 wife to the Applicant No. 1.*
4. *The Respondent No. 2 hereby Confirms having received the said Demand Draft bearing No. 004284 dated 17th December 2021 for the sum of Rs. 19,00,000/- (Rs. Ninteen lacs Only) as mentioned in Clause 2 and the Ornaments as mentioned in clause 3 herein above.*
5. *The Respondent no. 2 wife undertakes file her affidavit supporting the quashing of the FIR no. 413 of 2020 in the Hon'ble Bombay High Court on or before the next date of hearing of the above matter.*
6. *The Applicant No. 1 husband shall arrange to convert the divorce petition no. 598 of 2020 pending in the court of Civil Judge Senior Division Pune, into a mutual consent divorce. The respondent no. 2 wife shall sign such proceedings as may be required for expeditious final divorce. The memorandum of Consent Term will be the part of said mutual consent divorce.*
7. *The respondent no. 2 wife undertakes to withdraw the DV case No. 199/2021 filed in the learned MM court at Andheri on the next date of hearing or soon thereafter.*
8. *The parties hereby give an undertaking to this Honourable Court not make any allegations against each other in any manner, the parties shall not file*

any other proceedings and/or if any other pending proceeding not mentioned herein shall be withdrawn by the filing party.

9. *Both the parties hereby give an undertaking to this Honourble Court and state that neither parties shall have any claims whatsoever against each other upon due compliance of these terms.*

10. *The parties hereby Confirm that the above mentioned terms have been agreed upon by the parties to the dispute, voluntarily and without any coercion and as full and final settlement of all disputes between the parties.*

6. The Mediation report is taken on record and marked 'X' for identification. Pursuant to the statement before the Mediator, the Respondent No.2 has tendered an affidavit sworn before the officer of this Court with necessary identity documents. The learned counsel for the Respondent No.2 reiterates the contents of the affidavit on instructions of the Respondent No.2 who is present in the Court, as identified by the learned counsel for the Respondent No.2.

7. The Affidavit reads thus:

AFFIDAVIT IN SUPPORT
(FOR QUASHING FIR no. 413 of 2020 of JOGESHWARI
POLICE STATION)

I, Dr. Ankita Kunaal Shinde, the Respondent No.2 in the present Criminal Application, Aged about: 31 yrs., R/at. 14, Shyaam Gokul, Natwar Nagar, Road No. 2,

Jogeshwari (East), Mumbai – 400060, do hereby state on solemn affirmation as under:

- 1. I say that the Applicant no. 1 and I are husband and wife, and Applicant no. 2 and 3 are my in-laws. Pursuant to matrimonial disputes and incidents, a First Information Report (FIR) being FIR No. 413/2020 was registered by the Jogeshwari Police Station on 28th December 2020. Pursuant to the said FIR, a Charge Sheet has been prepared by Jogeshwari Police Station against the Applicants herein for the offences punishable under Sections 498(A), 406, 504, 506 r/w 34 of the Indian Penal Code, 1860. I do not desire to prosecute further the said F.I.R against the Applicants.*
- 2. I say that on 20th December 2021, I have amicably resolved all the matrimonial disputes with the applicants, upon terms and conditions, which are duly recorded in the memorandum of consent terms agreed and signed between all the parties on 20th December 2021.*
- 3. I say that basis above mentioned full and final settlement dated 20th December 2021 before the mediator, I am not desirous of prosecuting the Applicants or supporting the imputations made in the said F.I.R against them. I have no objection and I unconditionally with free will, consent to quashing of FIR No. 413/2020 registered with the Jogeshwari Police Station on 28th December 2020 and request this Hon'ble Court that the F.I.R and Charge Sheet Prepared by Jogeshwari Police Station against the Applicants herein for the offences punishable under Sections 498(A), 406, 504, 506 r/w 34 of the Indian Penal Code, 1860 may be quashed.*

8. The dispute which led to filing of F.I.R. was a matrimonial dispute which is now resolved through mediation and the Respondent No.2 has given consent for quashing of F.I.R. Keeping the prosecution pending in these circumstances will be harassment to all the parties. The dispute does not affect the society at large and by the stand of Respondent No.2 same may not result in conviction. Case, therefore, is made out for exercise of extraordinary jurisdiction of this Court to quash the F.I.R.

9. Accordingly, the Application is allowed in terms of prayer clause (A) as above.

10. Efforts taken by the learned Mediator are appreciated.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)