

VISHWANATH
SATYANARAYANA
SHERLA

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

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Date: 2021.07.31
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CRIMINAL WRIT PETITION NO.2663 OF 2021

Shri Rohit Radhekrishna Yadav & Others

... Petitioners

Vs.

State of Maharashtra & another

... Respondents

Ms.Krupali H. Rajani for the Petitioners

Ms.Sangeeta Shinde, APP, for Respondent – State

Ms.Hiral J. Thakkar for Respondent No.2

Respondent No.2 present through V.C.

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

DATED: JULY 30, 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 and heard finally.
2. This Petition takes exception to filing of First Information Report No.44 of 2021 for offences punishable under sections 498A, 406, 417 read with 34 of the Indian Penal Code registered with Kharghar Police Station, Navi Mumbai.

3. Learned Counsel appearing for the Petitioners and Respondent No.2 jointly submit that the petitioners and Respondent No.2 have amicably settled the dispute. Respondent No.2 has filed an affidavit to that effect. Respondent No.2 is identified by her advocate. We have interacted with Respondent No.2. She has stated that she has read the averments in the affidavit and the same are as per her narration. She has entered into amicable settlement without any coercion or duress. She has no objection for quashing the impugned First Information Report.

4. At this juncture, it would be apt to reproduce hereinbelow paragraphs 2 to 9 of the affidavit of 'No Objection for quashing the First Information Report' filed by Respondent No.2, as under:

"2. I further state that due to differences between me and the Petitioner no.1 we started residing separate from each other from 21.03.2018.

3. I say that thereafter, I filed F.I.R. bearing No.I-44/2021 registered with Kharghar Police Station under Section 406, 417, 498-A read with Section 34 of IPC against the above Petitioners and also filed Domestic Violence case Bearing Misc. Application No.75 of 2020 pending before the HON'BLE JUDICIAL MAGISTRATE FIRST CLASS PANVEL AT PANVEL against the above Petitioners.

4. However, I and the Petitioner have sorted out the differences and have put an end to all our disputes amicably

thereby we have voluntarily agreed to dissolve our marriage by Mutual Consent as prescribed u/s 13B of Hindu Marriage Act. And have thereby withdrawn all allegations against each other and respective families on the terms and conditions more particularly mentioned in the Consent terms executed before the Hon'ble JMFC Panvel, In the DV proceedings. I am hereby annexing the Consent terms executed before the Hon'ble JMFC Panvel in Domestic Violence case Bearing Misc. Application No.75 of 2020 which is annexed and marked as Ex.A.

5. I say that the Petitioner no.1 has handed over my streedhan to Kharghar Police Station and the same is available in their custody as mentioned below:

- a. Gold set given on Engagement (Necklace with earrings).
- b. Gold set given on Marriage (Necklace with earrings)
- c. Gold Mangtikka and Nathni.
- d. Gold Bangles (4)
- e. Gold Ring. I say that I have no claim of whatsoever nature against the petitioner with respect to my streedhan as I have received the same and there are no exchanges pending.

6. I say that the Petitioner no.1 has agreed to pay one time lump sum alimony/maintenance of Rs.10,00,000/- (Rupees Ten Lakhs) to me and the said amount is deposited before the Hon'ble Court of Senior Division, Panvel at Panvel on the 10th May 2021 date i.e. on the date of Converting the Marriage Petition Bearing No.47 of 2020 into Petition for Divorce by Mutual Consent and I shall be entitled to withdraw the said amount on the date of the Final Decree.

7. I say that on receiving the above amount of Rs.10.00 lakhs I shall not claim any maintenance/alimony/property/ from the Petitioners in future.

8. I have withdrawn the domestic violence case Bearing Misc. Application No.75 of 2020 pending before the Hon'ble

Judicial Magistrate First Class Panvel at Panvel.

9. I have agreed to compound and or quash the F.I.R. bearing No.I-44/2021 registered with Kharghar Police Station under Section 406, 417, 498-A read with Section 34 of IPC. I have No objection if this Hon'ble Court passes an order to quash F.I.R. bearing No.I-44/2021 registered with Kharghar Police Station under Section 406, 417, 498-A read with Section 34 of IPC."

5. The averments in the affidavit filed by Respondent No.2 coupled with her contention before us that it is her voluntary act to enter into the amicable settlement and give consent for quashing the First Information Report, persuade us to consider the prayer to quash the impugned First Information Report. No fruitful purpose will be served by continuing the proceedings for further investigation in relation to C.R. No.I-44 of 2021 registered with Kharghar Police Station for the offences punishable under sections 406, 417, 498-A read with section 34 of the Indian Penal Code as continuation of such investigation or proceedings arising out of the said C.R. No.I-44 of 2021 would be an exercise in futility and would tantamount to abuse of process of the concerned Court. So also, since Respondent No.2 is not willing to support the prosecution case, the chances of conviction of the petitioners would be remote and bleak.

6. Learned Counsel appearing for the petitioners has submitted that the parties are already before the learned Civil Judge Senior Division, Panvel who has fixed the date in the pending proceeding i.e., Misc. Application No.75 of 2020 on 2nd August, 2021 for pronouncement of order and Respondent No.2 will receive the amount of Rs.10 lakhs, which is deposited by petitioner No.1 in the Registry of the Civil Judge, Senior Division, Panvel, on passing the decree by the concerned Court.

7. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ 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 the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of

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.

8. In the light of the discussion in the foregoing paragraphs, in order to secure the ends of justice and to prevent the abuse of process of the concerned Court, the petition deserves to be allowed. Accordingly, the same is allowed in terms of prayer clause (a) which reads as under:

“(a) Issue a writ of Certiorari quashing the impugned First Information Report dated 02/02/2021 Registered as Case Crime No.44 of 2021 under sections 498(A), 406,417 read with 34 of IPC, in Kharghar Police Station, District Raigad;”

9. Rule made absolute to the above extent. Writ Petition stands disposed off accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)