

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1413 OF 2021

- | | | |
|----|--|----------------------------|
| 1] | Mr. Omar Haroon Shaikh |] |
| | Age : 41 Yrs. Occ – Business |] |
| | |] |
| 2] | Mr. Haroon Bashir Shaikh |] |
| | Age : 72 Yrs. Occ – Business |] |
| | |] |
| 3] | Mrs. Jyoti Haroon Shaikh |] |
| | Age 67 Yrs. Occ – Housewife |] |
| | |] |
| | All three presently residing of |] |
| | 701, Amin Altrus, 30 th Road, |] |
| | Bandra, (West) |] |
| | Mumbai – 400 050 |] |
| | |]..... Petitioners |
| | |] Org. Accd. Nos.1, 2 & 3. |

versus

- | | | |
|----|-----------------------------|---------------------|
| 1] | The State of Maharashtra |] |
| | (Bandra Police Station, |] |
| | Vide F.I.R. No.128 of 2013) |] |
| | |] |
| 2] | Almas Mehmood Whewaria |] |
| | Age : 36 years, |] |
| | Resident of : |] |
| | 202, La Serena |] |
| | Near Raj Kumar Hotel, |] |
| | J. P. Road, Andheri (W) |] |
| | Mumbai 400058 |] |
| | |]..... Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.1506 OF 2021

- | | |
|----------------------------------|--------------------|
| Mushtaq Ahmad Kapadia |] |
| Aged : 64 years, |] |
| Occupation : Business |] |
| Residing at 202, La-Sarena |] |
| Opp. Rajkumar Hotel, J. P. Road, |] |
| Andheri (West), Mumbai – 400 058 |] |
| |]..... Petitioner. |

Versus

- | | | |
|----|--|---------------------|
| 1] | State of Maharashtra |] |
| | Through Amboli Police Station, |] |
| | Having their address at Patel Estate Road |] |
| | Opp. Pushtik Society, Jogeshwari (West), |] |
| | Mumbai – 400 102 |] |
| | |] |
| 2] | Smt. Jyoti Haroon Shaikh |] |
| | Having address at E-4, Marian House, |] |
| | 29 th Road, TPS III, Off. Waterfield Road |] |
| | Bandra (W), Mumbai – 400050 |]..... Respondents. |

Mr. Zehra Charania i/by Mr. Ayan Khan for Petitioners in Writ Petition No.1413 of 2021 and for Respondent No.2 in Writ Petition No.1506 of 2021.

Mr. Ibrahim Memon i/by Mr. Shoib I Memon for the Petitioner in Writ Petition No.1506 of 2021 and for Respondent No.2 in Writ Petition No.1413 of 2021.

Mr. Deepak Thakre, PP a/w Mr. S R Shinde, APP for the Respondent/State.

Respondent No.2 in both the Petitions are present.

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

Reserved on : 23rd March 2021
Pronounced on : 05th April 2021.

JUDGMENT : (PER S S SHINDE, J)

1 Both the Criminal Writ Petitions arise out of the FIRs lodged by the family members against each other, hence both the Criminal Writ Petitions are being disposed of by this common judgment.

2 Rule in both the Criminal Writ Petitions. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

3 Petitioner No.1 and Petitioner Nos.2 & 3 in Writ Petition No.1413 of 2021 are the ex-husband and parents in law of the Respondent No.2 – Almas Mehmood Whewaria who lodged the FIR being No.128 of 2013 against the Petitioners at Bandra Police Station, Mumbai for the offences punishable under Sections 498(A), 323, 504, 506 and 34 of the Indian Penal Code. After investigation of the said FIR No.128 of 2013, a charge-sheet has been filed before the 12th Metropolitan Magistrate Court at Bandra and the case is numbered as Court Case No.1553/PW/2013. The Petitioners have filed Writ Petition No.1413 of 2021 for the seeking directions to

(a) Quash the proceedings in Case No.1553/PW/2013 arising out of C R No.128 of 2013 registered with Bandra Police Station and pending before 12th Court of Metropolitan Magistrate at Bandra, Mumbai.

4. So far as Petitioner in Writ Petition No.1506 of 2021 is concerned, he is a maternal uncle of said Respondent No.2 – Almas Mehmood Whewaria. Respondent No.2 – Smt. Jyoti Haroon Shaikh, who is the mother in law of said Almas Whewaria, has lodged FIR being No.162 of 2015 against the said maternal uncle of Almas Whewaria at Amboli Police Station at Mumbai for the

offences punishable under Section 354, 323, 504 and 506 of the Indian Penal Code. After investigation of the said FIR No.162 of 2015, a charge-sheet has been filed before the 66th Court of Metropolitan Magistrate at Andheri and the case is numbered as Court Case No.1387/PW/2016. The Petitioner has filed Writ Petition No.1506 of 2021 for the seeking following relief :-

- (a) that this Hon'ble Court may be pleased to quash FIR No.162 of 2015 dated 23/05/2015 registered by the officers of Amboli Police Station, Mumbai under Section 354, 323, 504 and 506 of the Indian Penal Code., 1860 as well as quash Criminal Case No.1387/PW/2016 pending on the file of the Metropolitan Magistrate 66th Court, Andheri after examining the legality of the same as well as the orders of process issued by the Learned Metropolitan Magistrate.

5 The learned counsel appearing for both the parties have jointly submitted that, Petitioner – Omar Haroon Shaikh and Respondent No.2 – Almas Mehmood Whewaria got married on 12/10/2008. Out of the said wedlock, a minor son by name Master Ibrahim is born on 10/04/2010 and as on today Master Ibrahim is 10 years old. It is submitted that there were disputes between the husband and wife and their family members which lead to filing of proceedings before the Family Court, Bandra. It is also submitted that the wife and husband have come to an amicable settlement and to that effect Consent Terms dated 01/02/2021 have been arrived at between the

parties and the same have been filed before the Family Court, Bandra, Mumbai. In the said consent terms, both the parties have agreed to withdraw their respective complaints, FIR cases/Petition filed against each other before 09/04/2021. Hence these Petitions. The copy of the said consent terms is placed on record for our perusal.

6 Clause Nos. 7 and 8 of the said Consent Terms are relevant and the same are reproduced herein under for ready reference.

“7 Petitioner i.e. power of attorney holder will withdraw or quash FIR No.162/2015 and case No.1387/PW/2016 filed against the respondent's uncle i.e. Mushtaq Ahmad Kapadia. Petitioner has also filed Writ Petition in Hon'ble High Court, and all the respective FIR Petition and case they will withdraw on or before 09.04.2021.

8 Both the parties withdraw their respective cases before 09.04.2021. Both the parties will withdraw their respective complaints, FIR, cases/petition against each other before 09.04.2021.

A) Respondent will withdraw following cases as follows :

a) FCA No.54/2015 and 91/2015 which are pending before Hon'ble High Court.

b) FIR No.128/2016 which is pending before the

Additional Metropolitan Magistrate at Bandra Court No.12 being case No.0701553/PW/2013 the said petition quash by petitioner and respondent will co-operate for the same.

c) ER No.174/2019 and ER No.9/2021 which are pending before Hon'ble Court Room No.2.

B) Petitioner will withdraw the following cases as follows :

a) Cr. M.A.28/2019, petitioner's mother Jyoti Haroon Shaikh has filed FIR as well as criminal complaint being FIR No.162/2015 filed in Amboli Police Station, said case is pending before Hon'ble Metropolitan Magistrate at Andheri Court Room No.66, case No.1387/PW/2016. Petitioner is filing for quashing/withdraw and respondent will co-operate for the same.

b) Petitioner also withdraw the writ petition No.3347/2016 which is pending before Hon'ble High Court.

In eventuality of any costs being levied by Hon'ble Court in FIR No.162/2015 the Petitioner mother Jyoti will bear costs.

In eventuality of any costs being levied by Hon'ble Court in FIR No.128/2013 the respondent Almas will bear costs."

7 It is submitted by the learned counsel for the parties that it is the voluntary act of both the complainants to arrive at settlement and give consent for quashing the impugned FIR/Chargesheet.

8 This matter was on board on 23/03/2021 for hearing. At that time Respondent No.2 – original complainants in both the Petitions were present in the Court. They were identified by their respective advocates. When we interacted with them, they stated that it is their voluntary act to enter into the settlement and file the consent terms before the learned Family Court, Bandra and they have agreed to withdraw their respective complaints/cases filed against each other. They further stated that they have no objection for quashing the impugned FIRs/Chargesheet filed by them against each other. In support of the aforesaid statements, both the Respondent No.2 i.e. the original Complainants in both the Petitions have filed their separate affidavits.

9 In paragraphs 1 to 4 of her affidavit, Respondent No.2 – Almas Mehmood Whewaria in Writ Petition No.1413 of 2021 has stated thus :-

“1 I say that I am the Respondent No.2 in the present Petition and Complainant in the case below-mentioned.

2 I say that due to the intervention of some respectable persons, the dispute between me and the Petitioner is amicably resolved and we have decided to put an end to

the dispute amicably.

- 3 I say that in view of the amicable settlement I have no grievances or claims against the Petitioner.
- 4 I say that I have no objection if the proceedings in Case No.1553/PW/2013 arising out of C R No.128 of 2013 registered with Bandra Police Station and pending before 12th Court of Metropolitan Magistrate at Bandra, Mumbai is quashed by this Hon'ble Court."

10 In paragraphs 1 to 4 of her affidavit, Respondent No.2 – Jyoti Haroon Shaikh in Writ Petition No.1506 of 2021 has stated thus :-

- "1 I say that I am the Respondent No.2 in the present Petition and Complainant in the present case.
- 2 I say that due to the intervention of some respectable persons, the dispute between me and the Petitioner is amicably resolved and we have decided to put an end to the dispute amicably.
- 3 I say that the C. R. No.162 of 2015 was registered with Amboli Police Station u/s 354, 323, 504 & 506 of Indian Penal Code. That the said complaint was registered due to misunderstanding between the parties. I say that the said misunderstanding is now cleared.
- 4 I say that in view of the amicable settlement I have no

grievances or claims against the Petitioner.

5 I have no objection if the proceedings in Case No.1387/PW/2016 arising out of C R No.162 of 2015 registered with Amboli Police Station and pending before 66th Court of Metropolitan Magistrate at Andheri, Mumbai is quashed by this Hon'ble Court.

11 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further proceedings in Case No.1553/PW/2013 arising out of C R No.128 of 2013 registered with Bandra Police Station for the offences punishable under Sections 498(A), 323, 504, 506 and 34 of the Indian Penal Code and pending before 12th Court of Metropolitan Magistrate at Bandra, Mumbai is quashed by this Hon'ble Court, and in Case No.1387/PW/2016 arising out of C R No.162 of 2015 registered with Amboli Police Station for the offences punishable under Section 354, 323, 504 and 506 of the Indian Penal Code and pending before 66th Court of Metropolitan Magistrate at Andheri, Mumbai.

12 The Supreme Court in the case of Giansingh 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 offence arising out

1 2012 (10) SCC 303

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.

13 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 2 i.e. the original complainants in both the Writ Petitions are not going to support the allegations made by them in their respective FIRs and further continuation of investigation in FIRs and the proceeding pending before the concerned Court would tantamount to abuse of the process of the Court since both the Respondent No.2 i.e. the original complainants by way of filing their respective affidavits have clearly stated that they are not interested to pursue the allegations made in the impugned FIRs and/or they would not participate in the pending proceeding before the

concerned Court, and hence the chances of conviction of the Petitioners in both the Petitions would be bleak and remote.

14 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the Court the Criminal Writ Petitions deserve to be allowed, and the accordingly the same are allowed in terms of prayer clause (a). Rule in both the Criminal Writ Petitions is made absolute to the above extent and the Criminal Writ Petitions stand disposed of accordingly.

15 We direct the parties to strictly abide by the mutual obligations as per the consent terms, breach of any terms and conditions of the Consent Terms shall be viewed seriously.

[MANISH PITALE, J]

[S. S. SHINDE , J]