

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

CRIMINAL WRIT PETITION NO. 3001 OF 2021

Hardik Ashwin Rawal & Ors.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

...

Ms. Suvarna Avhad Vast for Petitioners.

Mr. Rahul Dingankar for Respondent No. 2.

Mr. J.P. Yagnik, APP for State.

Respondent No. 2 is present.

...

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

DATE : 13th SEPTEMBER, 2021.

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

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

2. Learned counsel for petitioners and 2nd respondent jointly submit that the parties have amicably settled the dispute. Petitioner No. 1 and 2nd respondent approached the Family Court, Bandra, proceedings were instituted for divorce with mutual consent and accordingly decree of divorce with mutual consent has been drawn.

3. Respondent No. 2 is present before this Court. We have interacted with her. She stated it is her voluntary act to enter into the settlement and given consent for quashing the impugned FIR/chargesheet/proceedings. She stated that she has gone through the averments in the affidavit and she has no objection for quashing the impugned proceedings.

4. Respondent No. 2 has filed the affidavit. Para 1 to 9 of the said affidavit read as under:-

1. I say that I am the wife of Petitioner no. 1 and I am the Original Complainant in C.C. no. 649/PW/2017 which is pending before the Ld. 73rd Metropolitan Magistrate's Court Vikhroli, Mumbai.

2. The Petitioner no. 1 and the Respondent no. 2 were married to each other on 15.04.2012 at Brahman Samaj Hall, Ghatkopar (East), Mumbai; as per Hindu religion customs and tradition as per provisions of the Hindu Marriage Act, 1956. The said marriage was arranged marriage.

3. At the outset, I say that without prejudice to my rights and contentions I am filing present Affidavit-in-reply for giving my consent for allowing the abovementioned Criminal Petition and/or grant of relief to the Petitioner no. 1 in the said Criminal Petition. I crave leave of this Hon'ble High Court to file a detailed Affidavit-in-reply at a later stage, if necessary.

4. I say and submit that I am aware of the contents of the petition filed before this

Hon'ble Court and as the petition is filed in the view of the Consent Terms in the Petition No. F-2058/2017 filed before the Hon'ble Family Court, I agree and believe that whatever is stated in the petition is true.

5. I say and submit that Petitioner no. 1 had filed a petition for divorce before the Hon'ble Family Court being Petition A-2058 of 2017 which was converted into Mutual Consent Divorce petition on 08.02.2021. Hence the said petition is pending before the Hon'ble Family Court at Bandra; Mumbai; under section 13(b) of Hindu Marriage Act 1955 for divorce by Mutual Consent bearing Petition No. F-2058/2017.

6. I say and submit the Petitioner No. 1 has deposited a Demand Draft of Rs. 5,00,000/- (Five Lakhs Only) vide Demand Draft no. 222756 Drown on Bank of Baroda in the Hon'ble Family Court on 23/02/2021, and has handed over the original receipt to me on the date of filing the said petition.

7. I say and submit that in view of the Consent Terms I undertake to withdraw the amount of Rs. 5,00,000/- (Five Lakhs Only) from the Hon'ble Family Court after the passing of the Divorce Decree by the Hon'ble Court.

8. I say and submit that both the parties undertake to co-operate with each other in the proceedings before the Hon'ble Family Court and the Hon'ble Family Court and remain present before the respective Courts on the respective dates of hearing.

9. I pray that this Hon'ble Court, in the interest of justice, be pleased to allow the prayer of the Petitioners to quash and set aside the proceedings arising out of charge-sheet filed u/s u/s 498A, 406, 323, 504, 506 and 34 of I.P.C. (being C.C. no.

*649/PW/2017) which is pending before the
Ld. 73rd Metropolitan Magistrate's Court
Vikhroli, Mumbai.*

5. Since the 2nd respondent and petitioners have resolved the dispute amicably and Respondent No. 2, during our interaction stated that she has no objection for quashing the impugned proceedings i.e. C.C. No. 649/PW/2017 pending before the learned 73rd Metropolitan Magistrate's Court, Vikhroli, Mumbai, for offences punishable under Section 498A, 406, 323, 504, 506 and 34 of IPC, no fruitful purpose would be served by continuing the aforesaid proceedings. Further continuation of said proceedings would tantamount to the abuse of the process of the Court and exercise in futility. In view of stand taken by the 2nd respondent the chances of conviction of petitioners would be remote and bleak.

6. 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 of

1 2012 (10) SCC 303

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.

7. In the light of discussion in foregoing paragraphs, in order to secure the ends of justice and 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).

8. Rule is made absolute to above extent.

9. We direct the Family Court, Bandra, to disburse the amount in favour of 2nd respondent, as expeditiously as possible, however, within two weeks from today.

10. The writ petition stands disposed of.

11. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)