

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

CRIMINAL APPLICATION NO. 526 OF 2021

Mr. Prakash Harjivan Makwana & Ors. ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. Himanshu Nagarkar for applicant.

Ms. Kavita Samant for Respondent No. 2.

Respondent No. 2 is present thorough Video Conferencing.

Mrs. S.D. Shinde, APP for State.

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

DATE : 8th JULY, 2021.

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

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

2. Learned counsel appearing for applicants and 2nd respondent submits that the parties have amicably settled the dispute and have instituted the proceedings before the Family Court, Bandra, for divorce by mutual consent.

3. Respondent No. 2 is present before this Court. We have interacted with her through video conferencing. She stated that it is

her voluntary act to enter into the settlement and give consent for quashing the FIR and chargesheet impugned in the present application. She further stated that her husband Mr. Prakash Makwana and herself have instituted the proceedings before the Family Court, Bandra, for the divorce by mutual consent. The amount of Rs. 13,00,000/- (Rupees Thirteen Lakhs only) as agreed in the consent terms is deposited before the Family Court, Bandra, and on passing the decree by Family Court, Bandra, she will be entitled to receive the said amount. The Respondent No. 2 is identified by her advocate Ms. Kavita Samant. Paragraphs 10 to 20 of affidavit filed by Respondent No. 2 read as under:-

10. I say that During the pendency of the divorce proceeding bearing petition no. A-430 of 2018, in the Family Court at Bandra, Mumbai, I and the Petitioner No. 1 have amicably settled our disputes and voluntarily agreed to have divorce by mutual consent, by converting original petition for divorce into petition for divorce by mutual consent as per provisions of the Special Marriage Act 1954. The consent terms are submitted on record on 17th March 2021 in Hon'ble Family Court at Bandra, Mumbai.

11. I say that I have given my consent in the Consent Terms executed by and between I and the Petitioner No. 1, at the Ld. Family Court, Bandra, that the I shall give my free consent to cancel any warrants/look out notices of the Petitioner No. 1 before Ld. MM Girgaon Court, Mumbai.

12.I say that I filed the complaint against the Petitioner No. 1 to 6 and now all disputes between me and the petitioners are settled by amicable settlement.

13.I say that the present Petitioner No. 1 and I are the husband and wife respectively. The Petitioner No. 1 and I have filed and executed the Consent Terms before the Ld. Family Court at Bandra, Mumbai on 17th March, 2021.

14.I say that I and the petitioners have settled all the disputes, Complaints, Cases amicably for the null and final settlement of Rs. 13,00,000/- (Rs. Thirteen Lakhs Only), for the permanent maintenance for the son Master Karan and in view of the settlement between the petitioner No. 1 and I have permanently waived of my right of maintenance and alimony against the Petitioners. It is also agreed that the guardianship and permanent custody of our son Master Karan shall continue to be with me, the mother of Master Karan. I say that the Petitioner No. 1 has voluntarily given up/waives his right to have access to our son Karan and that he has further agreed not to interfere in any decision taken by me considering the welfare of son Karan.

15.I say that As per the consent terms, the Petitioner No. 1 on 22nd March, 2021 has deposited Rs. 13,00,000/- for the maintenance of Son Master Karan in the name of Family Court, at Bandra, Mumba, i.e. on the date when the consent terms were submitted on record in the Family Court in Petition No. A-430 of 2018 and that I am entitled to withdraw the said amount from the office of the Family Court, Bandra, Mumbai, upon the Hon'ble Family Court, Bandra, passing of the order

for dissolution of our marriage by mutual consent.

16.I say that It is decided in the Consent Terms that I shall not have any claims for myself or for and through my son of any nature against the petitioners after receiving the aforesaid amount of Rs. 13,00,000/- (Rs. Thirteen Lakhs only)., as the guardianship and permanent custody of son Karan shall continue to be with me, as sole Guardian of son Karan and in view of the petitioner no. 1 has permanently waives his claim/right of access to the son Karan.

17.I say that I and the petitioner no. 1 have agreed to abide all the consent terms submitted on record in Family Court, Bandra, Mumbai in Petition No. A-430 of 2018.

18.I say that The Petition for divorce filed in the Family Court, Bandra shall be converted into a Mutual Consent Petition u/s 28 of The Special Marriage Act and will be disposed off accordingly by filing Compliance Purses on record after decision of present Petition.

19.I say that I have also agreed to withdraw all the Complaints made before Police Authorities. Therefore, the present FIR will not be proceeded.

20.I say that in these circumstances, I am not intending to continue and pursue the case registered F.I.R. No. 144/2012 on 16/09/2021 at Tardeo Police Station, Mumbai alleging that offence u/s 498-A, 406, and 34 of Indian Penal Code, 1860. In view of the permanent settlement between I and the petitioners and desire of the Petitioner No. 1 and I to seek divorce by

mutual consent, if the present criminal proceeding, if continued, it will be abuse of process of law. It is therefore submitted that in the interest of justice the aforesaid criminal proceedings are required to be quashed and set aside.

4. Since the parties have amicably settled the dispute, no fruitful purpose will be served by continuing the proceedings arising out of C.R. No. 144 of 2012 registered with Tardeo Police Station, for the offences punishable under Section 498(A), 406 and 34 of Indian Penal Code . In view of settlement between the parties and the consent given by 2nd respondent for quashing the FIR and chargesheet, the chances of conviction of applicants would be bleak and remote.

5. 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 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

¹ 2012 (10) SCC 303

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.

6. 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 concerned Court, the application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clause (1), which reads thus:-

1. That this Hon'ble Court may pass appropriate orders/writ/directions and quash and set aside all the proceedings arising out of and from the FIR bearing No. 144/2012, punishable under section 498-A 406 r.w. 34 of IPC registered with the Tardeo Police Station, Mumbai.

7. Rule is made absolute to above extent. The application stands disposed of.

8. The Family Court, Bandra, is directed to expedite the proceedings pending before it. The parties are directed to attend the proceedings before the Family Court, Bandra, as and when date is fixed by the concerned Court and extend full co-operation for early disposal of the pending proceedings.

9. All parties to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)