

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.506 OF 2021

- | | | |
|----|---|-----------------------|
| 1] | Mr. Abhishek Bhupendra Rathi |] |
| | s/o. Bhupendra Rathi |] |
| | Adult Hindu, Age – 35 years, Occ : Service |] |
| | |] |
| 2] | Mr. Ashish Bhupendra Rathi |] |
| | s/o. Bhupendra Rathi |] |
| | Adult Hindu, Age – 33 years, Occ : Service |] |
| | |] |
| 3] | Mrs. Surajkiran Bhupendra Rathi |] |
| | w/o. Bhupendra Rathi |] |
| | Adult Hindu, Age – 55 years, Occ : |] |
| | |] |
| 4] | Bhupendra Ghanshyamdas Rathi |] |
| | S/o Ghanshyamdas Rathi |] |
| | Adult, Hindu, Age – 61 years, Occ : Service |] |
| | |] |
| | All are residing at Flat No.H-103, |] |
| | Neel Kamal CHS Ltd., |] |
| | Chincholi Fatak |] |
| | Malad (West), Mumbai – 400 064 |] |
| | Email I.D. - abhishekrathi555@gmail.com |] |
| | |]..... Petitioners |
| | |] Applicant No.1 to 4 |

versus

- | | | |
|----|---|------------------------|
| 1] | Mrs. Hema Abhishek Rathi |] |
| | Nee Ms. Hema Dinesh Manihar |] |
| | W/o Abhishek Rathi |] |
| | Adult, Indian Hindu Inhabitant, |] |
| | Aged about 32 years, Occ : Business |] |
| | R/o House No.4, Sai Garden, |] |
| | Ambodi Road, Vasai (West), |] |
| | Dist – Paklghar – 401 202 |] |
| | Email I.D. - hema.manihar@gmail.com |] |
| | |]..... Respondent No.1 |
| | |] |
| 2] | State of Maharashtra |] |
| | (Malad Police Station, Dist. Mumbai S.D. |] |
| | |]..... Respondent No.2 |

Mr. Dashrath Parab a/w Ms. Shobha Chandala for the Applicants.
Mr. Diwakar Dwivedi a/w Mr. Pankaj Dwivedi for Respondent No.1.
Ms. M H Mhatre, APP for the Respondent No.2/State.
Respondent No.1 is present in Court.

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

DATE : 24th September 2021

ORAL JUDGMENT : (PER S. S. SHINDE, J)

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

2 The learned counsel appearing for the Respondent No.1 has tendered across the bar the affidavit of first Respondent. The same is taken on record.

3 This learned counsel appearing for the Applicants and the first Respondent jointly submit that the parties have amicably settled the dispute and consent terms have been filed before the Family Court, Bandra, Mumbai. It is submitted by the learned counsel for the Applicants that the amount mentioned in the consent terms has already been deposited in the Family Court, Bandra and on conclusion of the proceedings pending before the said Court, the first Respondent will receive the said amount.

4 The first Respondent is present before this Court. She is identified

by her advocate. We have interacted with the first Respondent. She stated that it is her voluntary act, without any coercion, to enter into such amicable settlement and file the consent terms before the Family Court, Bandra. She confirmed that the amount mentioned in the consent terms has been deposited by the Applicants in the Family Court, Bandra, and she will receive the said amount on conclusion of the proceedings pending before the said Court. She stated that she has no objection for quashing the impugned FIR and the charge-sheet.

5 It will be appropriate to reproduce Paragraphs 1 and 2 of the affidavit filed by the first Respondents, which read thus :-

“1 The Petitioner No.1 married to me on 17th January 2013 and out of said wedlock son Yuvaan was born on 27/1/2014. Since the petitioner no.1 had treated me with cruelty therefore I lodged a complaint with Malad police station which was recorded vide Cr No.425 of 2016 against petitioners. It appears that the charge sheet is filed by Malad police station and the case is numbered as 1732/pw/2018. That the petitioner no.1 also filed petition no. A-2110 of 2018 in family court, inter alia for dissolution of marriage dated 17th January 2013. During pendency of said petition before the family court Bandra, Mumbai the matter was referred to mediator and parties to the said petition, the dispute between the respondent no.1 was amicably settled and a consent terms dated 20th February 2021 came to signed by petitioner no.1 and the respondent no. 1 and their advocate. Pursuant to said consent terms dated 20th February 2021 the parties to the said consent terms agreed to dissolve the marriage dated 17th January 2013 on the terms and conditions stipulated in the said consent terms. The said consent terms is annexed to the petition as EXHIBIT-B. I crave leave to refer to and

relied to the consent terms then produce.

- 2 *In the said consent terms particularly in clause 8 I have given undertaking to co-operate with the petitioner to quash/dispose/withdraw the proceedings and file necessary affidavit as required. In view of the undertaking, I hereby confirm that the dispute between petitioners and myself is amicably settled pursuant to consent terms dated 20th February 2021 therefore I hereby consent for quashing of the FIR No.425 of 2016 and CC No.1732/pw/2018.*

6 Since the proceedings have been instituted by the Applicant No.1 and the first Respondent for divorce with mutual consent and since the first Respondent has stated that she does not wish to pursue the allegations made in the impugned FIR and, filed her affidavit before this Court giving her consent for quashing the impugned FIR and Charge-Sheet, no fruitful purpose would be served in continuation of further proceedings in CC No.1732/PW/2018 arising out of the impugned FIR No. 425 of 2016 registered at Malad Police station at the instance of the first Respondent against the Applicants for the offences punishable under Sections 498(A), 406, 377, 354, 323, 504, 506 & 34 of the Indian Penal Code.

7 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,

1 2012 (10) SCC 303

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 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.

8 In view of the amicable settlement between the parties and pursuant to it, the parties have filed the consent terms before the Family Court, Bandra, we are of the opinion that in order to secure the ends of justice and to prevent the abuse of the process of law/Court, this Criminal Application deserves to be allowed and the same is allowed in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court may be pleased to quash the F.I.R./C.R. No.425/2016, dated 30/08/2016 registered with Malad Police Station, u/s. 498 (A), 406, 377, 354, 323, 504, 506 & 34 of I.P.C. by the Respondent No.1

Mrs. Hema Abhishek Rathi nee Hema Dinesh Manihar as well as police caes W/1732/2018 and charge sheet filed in said FIR/CR No.425/2016.”

9 Rule is made absolute to the above extent and the Criminal Application stands disposed of accordingly.

10 It is informed that the next date before the Family Court, Bandra is on 13th October 2021; we impress upon the Family Court, Bandra to conclude the proceedings preferably on next date. The parties shall extend full cooperation for early disposal of the said proceedings pending before the Family Court, Bandra.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]