

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2661 OF 2021

Mohammed Waliurrahman Khan
@ Waliullah Nasibullah Khan and others Petitioners
Versus
The State of Maharashtra and others Respondents

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Mr. A.S. Sayed, Advocate for the Petitioners.
Mr. J.P. Yagnik, APP for the Respondent-State.
Mr. Mohammed Wasin Qureshi, Advocate i/b. Qureshi & Asso. for
Respondent No.3.

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CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 23 DECEMBER 2021

P.C.

On 20 December 2021, we had passed the following order :

“ *Heard the learned Counsel for the parties. Taken up for disposal.*

2. *The petition is filed for following prayer:*

“(a) That this Hon’ble Court be pleased to pass an appropriate writ, order or direction under the provisions of Article 226 of the Constitution of India, 1950 and under Section 482 of the Criminal

Procedure Code, 1973 calling for the records of FIR No.109 of 2017 registered by the Amboli Police Station Criminal Case No.3364/PW/2019 and Case No.278/(DV) 2016, which are pending before the learned Metropolitan Magistrate, 66 th Court, Andheri, if need be and after looking into the legality and validity of the same to quash and set aside FIR No.109 of 2017 registered by the Amboli Police Station Criminal Case No.3364/PW/2019 and Case No.278/DV/2016, which are pending before the learned Metropolitan Magistrate, 66 th Court, Andheri.”

3. *The learned Counsel for the Petitioners and the learned Counsel for Respondent No.3 state that matrimonial dispute, which has given rise to filing of this FIR, is resolved and an affidavit filed by Respondent No.3 giving her consent for quashing of the FIR is in light of this request. We have perused the facts of the case. Petitioner No.1 and Respondent No.3 got married on 21 May 2009. Petitioner Nos.2, 4 and 5 are brothers of Petitioner No.1. Petitioner No.1 is the brother of Petitioner Nos. 2, 3 and 4. Petitioner No.3 is the husband of Petitioner No.2 and brother-in-law of Petitioner Nos. 1, 4 and 5. Petitioner No.4 is the wife of Petitioner No.3. Petitioner No.6 is the wife of Petitioner No.5. In the FIR, Respondent No.3 alleged that she was subjected to physical and mental cruelty and demands of dowry.*

4. *In the affidavit filed by Respondent No.3, she has stated as under :-*

“ Her marriage solemnized with Petitioner No.1 on 21 May 2009 with Muslim rites and ritual. The marriage is arrange marriage with consent of all the family members. There is a dispute arose between her and Petitioner No.1 that she has filed complaint under various sections of Domestic Violence Act as well as she has registered FIR No.109 of 2017 registered by the Amboli Police Station in which charge sheet has been filed and numbered as Criminal Case No.3364/PW/2019, which is pending before the learned Metropolitan Magistrate, 66 th Court, Andheri.

The dispute arose between her and Petitioner No.1 is now amicably settled and now they have decided to get separate and start their life once again.

It is amicably settled between her and Petitioner No.1 that Petitioner No.1 shall pay Rs.14,50,000/- towards full and final alimony as well as towards the one time full and final maintenance towards his children.

It is amicably settled between her and Petitioner No.1 that the Petitioner shall pay Rs.7,50,000/- by Demand Draft bearing No.000235 drawn on Jana Small Finance Bank dated 31 March 2021, at the time of signing Khulanama (mutual divorce deed).

It is amicably settled between her and Petitioner No.1 that the remaining amount of Rs.7,00,000/- (Rupees Seven

Lakhs only), Cheque, i.e. (1) Rs.3,50,000/- bearing No.000002 drawn on Jana Small Finance Bank, Palghar Branch dated nil (2) Rs.3,50,000/- bearing No.000003 drawn on Jana Small Finance Bank, Palghar Branch dated nil issued by Petitioner No.1 on which date was blank. She undertake that when the matter, i.e. (1) Domestic Violence Case No.287/ DV/2017 and (2) 3326/PW/2019 (FIR No.109/2016) withdraw/quash, she shall put the date and submit the cheques for encashment.”

5. *The petition had come up on board on 3 August 2021 and statement of the learned Counsel for the Petitioners that demand draft will be issued in the name of Respondent No.3 for balance Rs.7 lakhs as per consent terms was recorded. The learned Counsel for Respondent No.3 states that the demand draft is handed over, however the date is of 18 August 2021 and that the Petitioners have assured that the dates will be extended.*

6. *Considering the fact situation presented before us, it is clear that the dispute that has led to filing of the FIR is a matrimonial dispute, which is now resolved and a Khulanama is annexed to the petition and, therefore, keeping the prosecution pending would be a harassment to the parties. Therefore, case is made out for exercise of extra ordinary jurisdiction to quash the FIR.*

7. *However, to ensure that the payment is done as per the consent terms, list the petition under the caption “For Directions” on 23 December 2021.”*

2. The petition could have been allowed on that day itself. However, as noted therein, the Demand Draft to be given to Respondent No.3 had expired.

3. The learned counsel for Respondent No.3 states that a Demand Draft dated 22 December 2021 of Rs.Seven Lakhs is handed over to Respondent No.3.

4. In light thereof and in view of what is stated in the order dated 20 December 2021, the petition is allowed in terms of prayer clause (a). Order accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)