

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

CRIMINAL WRIT PETITION NO.2286 OF 2021

Durgesh Rajendra Patil & Others

... Petitioners

Vs.

Neha Rajpoot & another

... Respondents

Mr.S.C. Singh for the Petitioners

Ms.Shweta Singh for Respondent No.1

Ms.A.S. Pai, APP, for Respondent – State

Ms.Neha Rajpoot, Respondent No.1 – present through Video Conferencing.

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

DATED: JUNE 30, 2021

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

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

2. This Petition takes exception to filing of First Information Report No.385 of 2017 for offences punishable under sections 498-A, 323, 504, 406 read with section 34 of the Indian Penal

Code registered with Kasturba Marg Police Station, Borivali and the consequent Criminal Case No.2789/PW/2019 filed in the Court of Metropolitan Magistrate, 68th Court at Borivali, Mumbai.

3. Learned Counsel appearing for the petitioner and Respondent No.1 jointly submit that the parties have amicably settled the dispute and to that effect, consent terms have been filed before the Family Court at Bandra. A copy of the consent terms is placed on record in the compilation of this Writ Petition.

4. We have interacted with Respondent No.1 through video conferencing. She stated that it is her voluntary act to enter into amicable settlement with the petitioner and has joined the prayer of the petitioner for quashing the First Information Report.

5. Respondent No.1 has filed an affidavit. In the said affidavit, in paragraphs 1 and 2, it is stated as under:

“1) I say that I have received the copy of writ petition filed by the petitioners above named and gone through the averments and statements made therein.

2) I say that I have settled the matter with petitioners and now I have no grievance against petitioners. I further say that I have no objection if this Hon'ble court be pleased to quash the case bearing no.2789/PW/2019 pending before LD.M.M. 68TH Court Borivali Mumbai arising out of F.I.R.

No.385 of 2017 Registered by the Police of Kashturba Police Station against petitioners for offence punishable U/S 498- (sic), 323, 540 (sic), 406 R/W 34 of the I.P.C.”

6. Respondent No.1 has also filed an additional affidavit. In the said additional affidavit, it is stated in paragraphs 1 to 3 as under:

“1. I say that Petition for mutual divorce file by me and petitioner No.1 along with consent terms before the Hon’ble Family Court Mumbai bearing petition No.F-304/2020 and the Hon’ble family Court was pleased to pass decree of divorce on 02/01/2021. Hereto annexed and Marked as Exhibit “Exh-A” is the Copy of decree passed by the Ld.Judge in petition No.F-304/2020 dated 02/02/2021.

2. I say that petitioner no.1 paid a sum of Rs.12,00000/- (Rupees Twelve lakh Only) for one time final settlement towards child support to me as a full and final amount as settlement. I say that I have received a sum of Rs.12,00000/- (Rupees Twelve Lakh Only) by way of D.D. bearing No.590267 (Revalidated) on 31/03/2021 from petitioners and now I have no claim and no grievance against petitioners. Hereto annexed and Marked “Exh-B” is the Copy of Demand Draft.

3. I say that I have no objection if this Hon’ble court be please to quash the case bearing no.2789/PW/2019 pending before LD.M.M. 68TH Court Borivali Mumbai arising out of F.I.R. No.385 of 2017 Registered by the Police of Kashturba Marg Police Station against petitioners for offence punishable U/S 498- (sic), 323, 540 (sic), 406 R/W 34 of the I.P.C.”

7. The petitioner and Respondent No.1 have amicably settled the dispute and to that effect, consent terms have been filed before the Family Court and it is stated in the affidavit and also the additional affidavit filed by Respondent No.1 that it is her voluntary act to enter into such settlement and she has also received the amount stated in the consent terms filed before the Family Court. It is also stated that the marriage is already dissolved by a decree of divorce passed by the Family Court at Bandra.

8. In view of the discussion in the foregoing paragraphs, in our considered opinion, further continuation of First Information Report No.385 of 2017 for offences punishable under sections 498-A, 323, 504, 406 read with section 34 of the Indian Penal Code registered with Kasturba Marg Police Station, Borivali and the consequent Criminal Case No.2789/PW/2019 filed in the Court of Metropolitan Magistrate, 68th Court at Borivali, Mumbai would be an exercise in futility and would tantamount to abuse of process of the Court.

9. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that the criminal cases having

¹ 2012 (10) SCC 303

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 offences 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.

10. In that view of the matter, in order to secure the ends of justice and to prevent further abuse of the process of the Court, we

are inclined to allow the petition. Accordingly, the petition is allowed and Rule is made absolute in terms of prayer clause (a).

11. Writ Petition stands disposed off accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)