

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.490 OF 2021

Dhananjay Narendra Sheth

S/o. Narendra Sheth And Ors.

.. Applicants

v/s.

Nayana Dhananjay Sheth

Nee Nayana Vijay Kadam And Anr.

.. Respondents

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Mr. Dashrath Parab, for the Applicants.

Ms. Shobha Chandak, for Respondent No.1.

Ms. M.H. Mhatre, APP, for Respondent State.

Ms. Nayana D. Sheth, Respondent No.1 present in Court.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 12 OCTOBER 2021.

P.C:-

Issue notice for final disposal. Learned Counsel for Respondent No.1 and learned APP waives service. Taken up for disposal forthwith.

2. The application is filed for quashing of the FIR.

3. Applicant No.1-Dhananjay Narendra Sheth is the husband of Respondent No.1, Applicant No.2-Narendra Krashnalal Sheth is the father-in law, Applicant No.3-Minaxee Narendra Sheth is the mother-in-law and Applicant No.4-Harshal Narendra Sheth is the brother-in-law.

4. Respondent No.1 filed the FIR as above alleging cruelty and harassment at the hands of the Applicants. After the FIR was registered on 6 March 2021, Applicant No.1 and Respondent No.1 filed proceedings (Consent Petition (L) No.2414/2021) seeking divorce by mutual consent under Section 28 of Special Marriage Act. The consent terms have been filed in those proceedings on 6 March 2021. Pursuant thereto, the present application is filed to which Respondent No.1, after appearing through Advocate, has filed an affidavit and has given consent for quashing of the FIR. Consent terms are also placed on record. The learned Counsel for the Applicants and the learned Counsel for Respondent No.1 state that this is a fit case where the FIR needs to be quashed.

5. The consent terms filed in the Family Court, Bandra contain the following stipulations:

“4. Petitioner No.1/family herein has processed an Application before the Hon’ble High Court of Judicature At Bombay, bearing Registration No.APL/70/2021, for quashing the FIR

No.26/2020.

5. That both the parties agree to quash Criminal Case Viz. C.R. No. 26/2020 filed under sections 498(A), 406 R/w. 34 IPC after filing of the Mutual Divorce Application and the Petitioner No.1-husband depositing Rs.21,00,000/- [Rs. Twenty-One Lakhs only] in the Family Court by drawing pay order in the name of 'Principal Judge Family Court at Bandra' along with the Mutual Divorce Papers. Petitioner No.2/wife is entitled to withdraw the same only after giving her consent appearing before the Hon'ble High Court (if required) for quashing of F.I.R. No.26/2020 registered with M.H.B. Police Station and after the Decree of Divorce by mutual consent is ordained. The said amount is paid as and by way of one-time lumpsum lifetime settlement for maintenance of minor son Master Shaurya.

6. Petitioner No.2/wife hereby agrees and undertake to give unconditional No-objection and consent for quashing of F.I.R. No.26 of 2020 and also by personally remaining present (if required) before the Hon'ble High Court of Judicature at Bombay, to quash all the proceedings thereafter filing the Mutual Consent Divorce Petition and after submitting the hereinabove mentioned amount of Rs.21,00,000/- [Rs. Twenty-One Lakhs only] in the name of 'Principal Judge Family Court at Bandra' as Fixed Deposit.

7. It is agreed by and between the parties that both shall file a joint application before this Hon'ble Court to get the said hereinabove mentioned amount of Rs.21 lakhs, thus deposited by Petitioner No.1 in a Fixed Deposit for six months and Petitioner No.2/wife shall be entitled to withdraw the said amount along with interest thereon on the passing Decree of Divorce in Consent Petition."

6. Affidavit in reply filed in this Court by Respondent No.1 states as under:-

“4. That subsequent to his filing the said FIR on 17/01/2020, then they have filed petition for decree of Divorce by Mutual Consent u/s. 28 of the Special Marriage Act, 1954 bearing Petition Lodging No.2414 of 2021 before the Hon’ble Family Court at Bandra, Mumbai. They have filed consent terms in the said mutual consent petition and as per the said consent terms, it is agreed by and between her and Applicant No.1 that Applicant No.1 shall get the criminal case filed by her at the M.H.B. Colony Police Station, Borivali, Mumbai quashed by taking appropriate proceedings. She has also agreed to co-operate with the proceeding filed by Applicant No.1 for quashing the FIR filed by her and give her consent for quashing the said FIR.

5. That as agreed in consent terms dated 6 March 2021, it is agreed by and between them that the full and final total amount of Rs.36,37,000/- towards their son Shaurya maintenance/upkeep etc. Applicant No.1 has deposited Rs.21,00,000/- (Rupees twenty-one lakh only) one-time lumpsum lifetime settlement for maintenance of minor son Shaurya by demand draft drawn on HDFC Bank, Borivali (West) Chamunda Circle, Branch, Mumbai. Applicant No.1 agrees and undertakes that he will give no objection for withdrawal for same amount which has deposited in Family Court as well as he agrees and undertakes that he will appear/file his affidavit for passing decree of divorce in family Court after quashing the said FIR. The Applicants have already attached the said DD and Receipt with their Application. That she has already withdraw nRs.15,37,000/- of RD amount, IDBI Bank as per Consent Terms dated 6 March 2021, clause No.9.

6. That divorce of decree will be passed after the quashing of criminal case filed by her against Applicant No.1 and his parents and brother. Applicant No.1 agrees and undertake

that he will appear/file his respective affidavit in Family Court for passing decree of divorce in consent petition.

7. That she was duly served with the notice of the present criminal application and as agreed before the Mumbai Family Court, She states and declares that she has no objection for quashing of the F.I.R. u/s. 498(A), 406 r/w. 34 IPC and subsequently the FIR/C.R. No.26/2021 was registered by the M.H.B. Colony Police Station, Borivali, Mumbai. She states that she do not want to proceed with the complaint filed by her against all the Applicants.”

7. Respondent No.1, who is present in the Court, identified through her Advocate, has confirmed the statements made in the affidavit. Having perused the FIR we find that the offence sought to be made out by Respondent No.1 cannot be considered as affecting fabric of the society and will fall within the parameters laid down by the Apex Court in the case of *Gian Singh vs. State of Punjab And Another*¹ wherein, in respect of fact situation such as the present one and purely matrimonial disputes in identical facts, the Apex Court has opined that the discretionary power of the Court can be used to quash the FIR. Therefore, taking overall view of the matter, this is a fit case and prayers sought for by the Applicants need to be granted.

8. The application is allowed in terms of prayer clause (a), which reads thus:

“(a) This Hon’ble Court may be pleased to quash the FIR/

1 (2012) 10 Supreme Court Cases 303

CR No.26/2020, registered with M.H.B. Colony Police Station, Borivali, Mumbai bearing FIR/Cr. No.26 of 2020, U/s. 498A, 406, 34 of IPC, by Respondent No.1 Mrs. Nayana Dhananjay Sheth Nee Nayana Vijay Kadam against all the Applicants as well as if charge sheet filed in the said FIR.”

9. Rule made absolute in above terms. Application is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)