

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1969 OF 2018

Jignesh Narayan Rao And Ors. .. Petitioners

v/s.

The State of Maharashtra & Anr. .. Respondents

....

Mr. Vikas Singh, for the Petitioners.

Mrs. S.D. Shinde, APP, for Respondent No.1.

Mr. Omprakash Dubey, for Respondent No.2.

....

CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 4 OCTOBER 2021.

P.C:-

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal in view of the order that is proposed to be passed.

2. The Petitioners have filed this writ petition for quashing the FIR, bearing No. CR No.28 of 2017, dated 12 January 2017, registered at Vakola Police Station for the offences alleged to have been committed by the Petitioners herein punishable under Sections 498A, 323, 504, 506 read with 34 of I.P.C, 1860.

3. In this petition, notice was issued on 8 August 2018 and, while issuing notice, it was directed that charge-sheet should not be filed pending the disposal of this petition. The notice is served upon Respondent No.2. Respondent No.2 has filed appearance through Advocate. The learned Counsel for the Petitioners and Respondent No.2 inform that parties have settled their dispute and they have filed consent terms in the Family Court at Bandra on 17 March 2021. The affidavit filed by Respondent No.2 reiterates the position that the matter is settled between the parties and the FIR was lodged by Respondent No.2 on an allegation that Respondent No.2 was harassed by the Petitioners and was subjected to physical and mental cruelty.

4. In the affidavit that is filed by Respondent No.2, Respondent No.2 has stated as under:

“1. He was married to Petitioner No.1 on 09/03/2014 at Mini Punjab Lake side view, Powai, Mumbai according to Hindu customs and rites. There is a minor daughter namely, Ms. ANANYA KALNAD born on 25/02/2016 out of the said wedlock. Thereafter, there was differences between him and Petitioner No.1 and he is residing separately since 14/09/2015. He had filed a complaint against the petitioners and other in laws with Vakola police station and a case was registered under Section 498(A), 323, 504 and 506 r/w 34 of IPC, vide FIR No.28/2017 dated 12/01/2017.

2. He had also filed a compliant before the Hon’ble Ld. Magistrate 71st Court at Bandra Mumbai bearing C.C.No.75/DV/2017 under The Protection of Women from Domestic

Violence Act, and also filed the petition for Divorce before the Hon'ble Family Court at Bandra Mumbai bearing Petition No.A-547/2020.

3. The dispute is amicably settled before the Hon'ble Family Court on 17/03/2021 and a Consent Terms was signed by him and Petitioner No.1 and in the said consent terms it is agreed between himself and Petitioner No.1 that they have agreed for Divorce by Mutual Consent and they have also agreed to withdraw all the allegations made against each other.

4. Petitioner No.1, i.e. Husband, is paying/depositing/making online transfer of an amount of Rs.15,000/- (Rupees Fifteen Thousand only), per month pursuant to the order dated 28/06/2019 passed by the Ld. Metropolitan Magistrate, 71st Court at Bandra Mumbai to the account as mentioned herein under:-

Account Name : Ananya Kalnad

Account No. : 50100335405821

IFSC Code : HDFC0001333

Branch Santacruz-East Branch, Mumbai and Petitioner No.1 (Husband) shall continue to pay, Deposit or make online transfer the amount of Rs.15,000/- (Rupees Fifteen Thousand only), per month to the aforesaid account till the daughter (MS. ANANYA KALNAD) turns major (18 years of age) on 25/02/2034.

5. The matter is amicably settled between him and the Petitioners. He has no claim of whatsoever nature against the Petitioners except the maintenance of daughter as mentioned in the clause No.4 herein above and as memento in the consent terms. He do not want to proceed with the said matter registered by Respondent No.1, i.e. Senior Inspector of Police, Vakola Police Station. He do not want to lead any evidence before the Ld. Magistrate. He has no objection if the Criminal Writ Petition filed by the Petitioners is allowed by

this Hon'ble Court as matter is settled amicably between them."

5. The consent terms, which are placed on record, contain the following stipulation:

"The Parties hereto further agree that the Petitioner herein (Wife) shall withdraw the aforesaid Complaint bearing C.C.No.75/D.V./2017 before the Learned Metropolitan Magistrate, 71st Court at Bandra, Mumbai, and that she shall co-operate, execute Affidavit thereby giving no objection and pray for getting the aforesaid F.I.R. bearing C.R. No.28/2017 dated 12/01/2017 registered at Vakola Police Station quashed by consent before the Hon'ble Bombay High Court (Either in Criminal Writ Petition No.1969 of 2018 pending in the Hon'ble Bombay High Court And/Or in a Fresh Criminal Application/Writ Petition, if required) and/or compounded before the concerned Metropolitan Magistrate's Court at Mumbai. The Parties hereto undertake to execute all such deeds, documents, affidavits, petitions as may be necessary for getting the aforesaid Complaint and/or F.I.R. quashed/withdrawn and shall also appear before all the Courts, as and when required by any of the parties hereto."

6. We have interacted with Respondent No.2, who confirms the assertions made in the consent terms.

7. In view of the submission made by the parties in the consent terms it is clear that Respondent No.2 would not further participate in the prosecution and keeping the proceedings pending would be needless exercise and harassment to all the parties. The

Apex Court in *Gian Singh vs. State of Punjab And Another*¹ has laid down the law governing the exercise of the jurisdiction of this Court in such an eventuality. We are of the opinion that the facts of the present case squarely fall within the law laid down by the Supreme Court in the case of *Gian Singh*. The petition is allowed in terms of prayer clause (b), which reads as under :

“(b) *This Hon’ble Court on satisfying itself as to the correctness and legality of the F.I.R. bearing C.R. No.28/2017 dated 12.01.2017 registered at Vakola Police Station for the offences alleged to have been committed by the Petitioners herein punishable under Sections 498A, 323, 504, 506 r/w 34 of I.P.C., 1860 be quashed; and consequently proceedings arising out of F.I.R. bearing C.R. No.28/2017 dated 12.01.2017 registered at Vakola Police Station for the offences alleged to have been committed by the Petitioners herein punishable under Sections 498A, 323, 504, 506 r/w 34 of I.P.C., 1860 against the Petitioners herein/Accused Nos. 1 to 5, if any, be quashed.*”

8. Rule made absolute in above terms. Petition is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

1 (2012) 10 Supreme Court Cases 303