

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1250 OF 2021

Jitendra Baliram Patil
Age 37 years, Occ : Service,
R/at : Room No.15, 3rd Floor,
Dagdu Mirstri Niwas, Mahagiri,
Koliwada, Cidco Road,
Thane (W).

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]..... Petitioner.

Versus

- 1] State of Maharashtra
(at the instance of Kashimira
Police Station, Dist. Thane)

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2] Mrs. Vibhavari Jitendra Patil
Alias Vibhavari Bali
Age 39 years, Occ : Service
R/at C/o Shri.Puranchand Bali
C/1606, Oberoi Spledor
Opp. Majas Depot,
Jogeshwari, Mumbai 400 060

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]..... Respondents.

Mr. Virendra V Pethe for the Petitioner.
Dr. F R Shaikh, APP, for the Respondent/State.
Ms. Kokila Kalra for Respondent No.2.
Respondent No.2 present in Court.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ

Reserved on : 09th March 2021
Pronounced on: 12th March 2021

JUDGMENT : (PER S S SHINDE, J)

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

2 The learned counsel appearing for the Petitioner and the learned counsel appearing for Respondent No. 2 jointly submit that the parties have amicably settled the dispute and to that effect consent terms for mutual divorce have been filed in Marriage Petition No.622 of 2017 pending before the learned Civil Judge, Senior Division, Thane. It is also submitted that Petitioner No.1 is the husband of Respondent No.2 and they got married on 11th June 2015. It is also submitted that the dispute between the Petitioner and Respondent No.2 has been resolved amicably.

3 It is submitted by the learned counsel for Respondent No. 2 that it is the voluntary act of Respondent No. 2 to arrive at settlement and give consent for quashing the impugned FIR/Chargesheet.

4 This matter was on board on 09/03/2021 for hearing. At that time the 2nd Respondent was present before the Court. The learned counsel appearing for Respondent No.2 identified the Respondent No.2. When we interacted with her, she stated that it is her voluntary act without coercion to

enter into the settlement and sign the consent terms for mutual divorce. She further stated that she has no objection for quashing the impugned FIR and Chargesheet.

5 In support of her aforesaid statements, Respondent No.2 has filed her affidavit before this Court. In paragraphs 2 to 6 of her affidavit, Respondent No.2 has stated thus :-

“2 I say that dispute arose between the Petitioner and myself and I lodged a complaint vide FIR No.I 134 of 2016, for alleged offences U/s 498A and 420 of IPC registered against the Petitioner registered with Kashimira Police Station, District Thane against the Petitioner under Section 498A, 420 of Indian Penal Code.

3. I say that the Petitioner was arrested by the Kashimira Police Station and was granted bail by the Ld. Magistrate JMFC, Thane.

4. I say that during the pendency of the criminal case, after much persuasion and intervention by both the parties and their Advocates, the dispute was resolved amicably and arrived to a settlement.

5. I say that we have filed consent terms M.P. No.622 of 2017 in the matter pending before the Senior Division Civil Judge (SD), Thane.

6 I say that in view of the Consent Terms filed, I say that I do not have any objection if the criminal proceedings vide FIR No. I 134 of 2016 in RCC No.----- of 2017 pending before the JMFC Magistrate, Thane is quashed against the Petitioner in lieu of the Mutual Consent Petition which has been filed for Divorce.”

6 Since the Petitioner and the 2nd Respondent have amicably settled the dispute and the said dispute arose out of matrimonial discord, and in view of the fact that the parties have already filed consent terms for mutual divorce, no fruitful purpose will be served by continuing the further investigation in C R No. I 134 of 2016 registered with Kashimira Police Station, Thane, and proceedings being RCC No.800 of 2017 pending before the Court of learned 2nd Joint Civil Judge, Junior Division, & JMFC Thane.

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, 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

1 2012 (10) SCC 303

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 the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 2 is not going to support the allegations made in the impugned FIR and further continuation of investigation in C R No. I 134 of 2016 registered with Kashimira Police Station, Thane, and proceedings being RCC No.800 of 2017 pending before the Court of learned 2nd Joint Civil Judge, Junior Division, & JMFC Thane would tantamount to the abuse of the process of the Law/Court. Since the Respondent No.2 is not going to support the allegations made in the impugned FIR, the chances of the conviction of the Petitioner would be remote and bleak. In that view of the matter, the writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause (b) which reads thus :-

(b) This Hon'ble Court be pleased to quash and set aside the criminal proceedings arising out of the FIR registered vide C.R. No.I 134 of 2016 lodged with Kashimira Police Station, Dist. Thane along with Charge Sheet filed therein along with RCC No.800 of 2017 pending in the court of Ld. 2nd Jt. Civil Judge, J.D. J.M.F.C.”

9 Rule is made absolute to the above extent and, the Writ Petition stands disposed of accordingly.

10 The parties to abide strictly by the Consent Terms filed for mutual divorce and shall cooperate with the Family Court, Bandra, Mumbai for deciding the proceedings before it by attending the dates fixed by the said Court.

[MANISH PITALE, J]

[S. S. SHINDE , J]