

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

CRIMINAL APPLICATION NO. 538 OF 2021

Surinderpal Singh Kaushal & Anr.

...Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. Sameer P. Nangre for applicants.

Applicant No. 1 and 2 present through V.C.

Mr. Rupesh Lanjekar for Respondent Nos. 2 and 3.

Respondent Nos. 2 and 3 present through V.C.

Mrs. M.H. Mhatre, APP for State.

...

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

DATE : 19th JULY, 2021.

ORAL 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. This application is filed with following substantive prayer:-

(a) That the Hon'ble Court may be pleased to quash and set aside proceedings bearing CC.No. 73/PW/2021 arising out of C.R. No. 536 of 2020 registered at Bhandup Police Station, Mumbai for offence u/s. 323, 324, 504, 506, 34 of I.P.C. and pending before the LD. Metropolitan Magistrate 53rd Court, Mulund,

Mumbai, against the Applicants, on such terms and conditions as this Hon'ble Court may deem fit to grant in the circumstances of the case;

3. Learned counsel appearing for applicants and Respondent Nos. 2 and 3 jointly submit that the parties have amicably settled the dispute and Respondent Nos. 2 and 3 have filed affidavit thereby giving consent for quashing the impugned FIR and chargesheet.

4. Respondent Nos. 2 and 3 are present before this Court, through video conferencing. We have interacted with them. They stated that it is their voluntary act, without any force or coercion, to enter into the amicable settlement and give consent for quashing the impugned FIR and chargesheet. Parties have assured this Court that henceforth they will not indulge into such activities.

5. Respondent No. 2 has filed his affidavit before this Court. Paragraphs 1 to 5 of the said affidavit read as under:-

1. I say that on 26/10/2020, I have lodged an F.I.R. bearing Cr No. 536/2020 for offence u/s. 323, 324, 504, 506, 34 of IPC registered with Respondent No. 1 against the applicants. I say that after the completion of investigation the respondent No. 1 was pleased to file chargesheet against the applicants before the Ld. Metropolitan Magistrate, 53rd Court Mulund, Mumbai and it is numbered as CC.No. 73/PW/2021.

2. I say that the dispute between myself, and the applicants has been resolved and has been amicably settled between both the parties. I say that applicants are related to me and are my family members. I say that Applicant no. 1 is my real brother and applicant no. 2 is my nephew. I say that I have no grievance against the applicants.

3. I say that I do not want to pursue with the criminal case bearing No. 73/PW/2021 pending before the Ld. Metropolitan Magistrate, 53rd Court, Mulund, Mumbai against the applicants, in view of the settlement.

4. I say that I have no objection for quashing of the criminal case bearing C.C.No. 73/PW/2021 arising out of Cr.no. 536/2020 for offence u/s. 34, 323, 324, 504, 506 of IPC Act registered against the applicants and I consent for quashing of the same.

5. I say that I am making this Affidavit without any force or coercion or pressure and I am making the same on my own free will and accord and satisfaction.

6. Respondent No. 3 has also filed affidavit before this Court. Paragraphs 1 to 6 of the said affidavit read as under:-

1. I say that on 26/10/2020, my father i.e. Respondent no. 2 had lodged an F.I.R. baring Cr No. 536/2020 for offence u/s. 323, 324, 504, 506, 34 of IPC registered with Respondent No. 1 against the applicants. I say that after the completion of investigation the respondent No. 1 was pleased to file chargesheet against the applicants before the Ld. Metropolitan Magistrate, 53rd Court Mulund, Mumbai and it is numbered as CC. No. 73/PW/2021.

2. *I say that at the time of incident, applicant no. 2 hit me with iron rod on my head. I say that I am the brother of the applicant no. 2. I say that applicants are related to me and are my family members. I say that Applicant no. 1 is my uncle and Applicant no. 2 is my cousin brother.*

3. *I say that dispute between myself, and the applicants has been resolved and has been amicably settled between the parties. I say that I have no grievance against the applicants.*

4. *I say that I do not wish to pursue with the criminal case bearing No. 73/PW/2021 pending before the Ld. Metropolitan Magistrate, 53rd Court, Mulund, Mumbai against the applicants.*

5. *I say that I have no objection for quashing of the criminal case bearing C.C. No. 73/PW/2021 arising out of Cr.no. 536/2020 for offence u/s. 323, 324, 504, 506, 34 of IPC Act registered against the applicants and I consent for quashing of the same.*

6. *I say that I am making this Affidavit without any force or coercion or pressure and I am making the same on my own free will and accord and satisfaction.*

7. Since the parties have amicably settled the dispute and Respondent Nos. 2 and 3 have filed affidavit thereby giving consent for quashing the impugned FIR and chargesheet, no fruitful purpose will be served by continuing the proceedings bearing CC. No. 73/PW/2021 arising out of C.R. No. 536 of 2020 registered at Bhandup Police Station, Mumbai for offences under section 323, 324, 504, 506, 34 of I.P.C., pending before the LD. Metropolitan Magistrate 53rd Court, Mulund, Mumbai.

8. 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 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.

1 2012 (10) SCC 303

9. In view of discussion in foregoing paragraphs, to secure the ends of justice and prevent the abuse of the process of the Court, the application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clause (a), which is reproduced hereinabove in para 2.

10. Rule is made absolute to above extent. The application stands disposed of.

11. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)