

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 542 OF 2021

Mr. Ajay Anand Dubal
Adult 41 years, Indian Inhabitant,
Occupation : Service, residing at 205
'E' Wing, Sector – 36, Suraj Complex,
Komothe, Panvel, Navi Mumbai,
Maharashtra – 410 209

...Applicant

Versus

1. State of Maharashtra
At the instance of Kamothe Police
Station, Navi Mumbai
2. Mrs. Prachi Ajay Dubal
Adult 32 years, Indian Inhabitant
Occupation : ----
Presently having address at New
Sandip Co-operative Society, "B" wing,
Shastri Nagar, Kalva (West), Thane.

...Respondents

WITH

CRIMINAL APPLICATION NO. 1403 OF 2018

1. Anand Chandu Dubal
Adult 70 years, Indian Inhabitant
Occupation : Business
2. Mrs. Uma Anand Dubal
Adult, Indian Inhabitant,
Occupation -
3. Mr. Abhijit Anand Dubal, Age : 28
All residing at 505 "E" Wing, Section –
36, Suraj Complex, Komothe, Panvel,
Navi Mumbai, Maharashtra – 410209

...Applicants

Versus

1. State of Maharashtra
At the instance of Kamothe Police
Station, Navi Mumbai
2. Mrs. Prachi Ajay Dubal
Adult ---- years, Indian Inhabitant

Occupation : ---

Presently having address at New
Sandip Co-operative Society, "B' wing,
Shastri Nagar, Kalva (West), Thane.

Mr. R. Sathyanarayanan, for the Applicants in both petitions.

Mr. Nikhil Waje, for Respondent no.2 in both petitions.

Mr. V. B. Knondedeshmukh, APP for the State.

Respondent no.2 is present through Video Conferencing and
interacted in APL/542/2021.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ**
DATED: 20th JULY, 2021
(Through V.C.)

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the
consent of the Counsels for the parties, heard finally.

2. These applications are preferred to quash Regular
Criminal Case No.503 of 2019, pending on the file of the learned
Judicial Magistrate, First Class, Panvel, arising out of FIR
No.124/2018, for the offences punishable under Sections 377,
498A, 406, 323, 504, 506 read with Section 34 of the Indian
Penal Code, 1860 ("the Penal Code"). The applicant in Criminal
Application No.542 of 2021 is the husband of respondent no.2 -
the first informant. The applicants in Criminal Application
No.1403 of 2018, are the in-laws of respondent no.2.

3. Mr. Sathyanarayanan, the learned Counsel for the applicants and Mr. Waje, the learned Counsel for respondent no.2 make a joint statement that, in the intervening period, the applicants and respondent no.2 have amicably resolved the dispute. The parties have executed Consent Terms. In pursuance thereof, the applicant Ajay and respondent no.2 Prachi have filed a petition for divorce by mutual consent before the Family Court, Thane, under Section 13B of the Hindu Marriage Act, 1955.

4. Respondent no.2 Mrs. Prachi is present before the Court. During the course of interaction, respondent no.2 informed the Court that she has decided to resolve the dispute amicably, on her own volition. There is no coercion or duress. She claimed to have executed the Consent Terms voluntarily. Clause nos.1, 3, 6, 7 and 9 of the Consent Terms read as under:

“(1) Party of the SECOND PART has agreed to pay the party of FIRST PART a lumpsum amount of Rs.25,00,000/- towards her permanent maintenance/alimony;

(3) The party of the FIRST PART states that she has received her Gold Articles from SECOND PART before filing of the present petition.

(6) Both parties maintain that save and except above matters no other cases are pending and both parties shall not interfere to each other's life and party of the FIRST PART who has written complaints to the office of the SECOND PART and all other competent Authorities/organizations, shall withdraw the same on the day of signing this present and not pursue the same and further she would not make any complaints to the

office of the party of the SECOND PART or to any other Public Authorities / Bodies and / or Private Bodies in future.

(7) Both parties will not file any civil, criminal or complaint of any nature in police station or court of law in future.

(9) The Parties are entering into the consent terms out of their own free will, accord and not influence by any force or undue influence.”

5. Mrs. Prachi, respondent no.2, further informed the Court that she has received tranches of compensation amount, agreed to be paid as per the above Consent Terms. Respondent no.2 has also filed an affidavit before this Court. Paragraphs 4 to 7 of the affidavit read as under:

“4. I say that I have settled all disputes with Petitioner herein and have amicably entered / executed consent terms dated 25.03.2021. The said consent terms are annexed at Exhibit B to the petition.

5. I say that pursuant to the said consent terms I have also filed petition for divorce by mutual consent before Ld. Family Court Thane being Marriage Petition No.F297/2021.

6. I say that I have no objection and grievances against the Petitioner and his family members if the present petition is allowed and the said Criminal Case being R.C.C.No.503 of 2019 and said FIR being quashed.

7. I say that I have settled all disputes with the Petitioner and his family members amicably and does not wish to prosecute any case/complaint against them pursuant to the consent terms dated 25.03.2021.”

6. In the light of the aforesaid submissions and statements in the Consent Terms and affidavit of respondent no.2, we have perused the material on record. From the averments in the FIR

it becomes evident that the marital discord between the applicant Ajay and respondent no.2 is the genesis of the instant prosecution and the other proceedings between the parties. It seems that the parties have decided to bury the hatchet and settle the dispute in its entirety. The applicant Ajay and respondent no.2 have also agreed to dissolve the marriage by mutual consent and thus instituted a petition being Marriage Petition No.F297 of 2021 before the Family Court. In this view of the matter, no fruitful purpose would be served by continuing the prosecution. In view of the settlement arrived at between the parties, the possibility of the prosecution ending in a conviction is very remote and bleak. Continuation of prosecution, in such circumstances, would amount to abuse of the process of the Court. It will also cause grave prejudice not only to the applicants but respondent no.2 as well.

7. A useful reference in this context can be made to the judgment of the Supreme Court in the case of *Gian Singh vs. State of Punjab and another*¹, wherein the Supreme Court has observed as under;

“61..... the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences

1 2012 (10) SCC 303

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.”

8. The aforesaid pronouncement applies with equal force to the facts of the case at hand. In order to secure the ends of justice and prevent the abuse the process of the Court, we are persuaded to quash the prosecution.

9. Hence the following order:

: ORDER :

- (i) The applications stand allowed.
- (ii) Regular Criminal Case No.503 of 2019, arising out of FIR No.124 of 2018, pending on the file of Judicial Magistrate, First Class, Panvel, stands quashed.

Rule made absolute in aforesaid terms in both the applications.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]