

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

CRIMINAL WRIT PETITION NO. 3032 OF 2021

Purnima Gupta & Anr.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

...

Ms. Racheeta R. Dhuru for Petitioners.

Mr. Omprakash Parihar for Respondent No. 2.

Mr. S.R. Shinde, APP for State.

Respondent No. 2 is present in the Court.

...

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

DATE : 13th SEPTEMBER, 2021.

ORAL JUDGMENT: [PER S.S. SHINDE, J.]

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

2. Learned counsel for the petitioners and 2nd respondent jointly submit that the parties have amicably settled the dispute. The Petitioners have returned the entire amount to 2nd respondent. Respondent No. 2 has filed affidavit. The parties are identified by their respective advocates.

3. Respondent No. 2 is present before this Court. We have interacted with him. He stated that it is his voluntary act to enter into the settlement and given consent of quashing the impugned FIR. He stated that he has received the amount mentioned in para 5 of his affidavit. He has no grievance against the petitioners.

4. Para 5 to 11 of the affidavit filed by 2nd respondent read as under:-

5. That the Petitioners no. 1 and No. 2 i.e. Mrs. Purnima Gupta and Mr. Diwakar Gupta have refunded the total amount of Rs. 11,00,000/- by Demand Draft No. 763676, drawn on State Bank of India, dated 4/11/2020 for the sum of Rs. 7,00,000/-, in favour of Mrs Garima Arun Joshi, by Demand Draft No. 76367, drawn on State Bank of India, dated 4/11/2020 for the sum of Rs. 2,00,000/-in favour of Mrs. Garima Arun Joshi and by Demand Draft No. 763678, drawn on State Bank of India, dated 4/11/2020 for the sum of Rs. 1,00,000/-; and Rs. 1,00,000/- in cash and therefore nothing is due and payable from the petitioners to me. Hence the Petitioners have satisfied my entire monetary claim. Further I do not wish to pursue the criminal complaint/said FIR registered against them.

6. I say that neither I nor my daughter in law (Mrs. Garima), my son or any other member of my family or any of our representative or third party shall have any further claim under civil or criminal law in relation to this matter.

7. *I say that the pendency of the above matter will not serve any purpose but would in fact create hurdles for the applicants and Respondent No. 2 in starting their life afresh.*

8. *I say that the pendency of proceedings is causing mental stress and agony to both/all the parties.*

9. *In the interest of maintenance of harmony, peace and changed condition, I say that I have come to conclusion that prosecution will be a futile exercise and hence I hereby grant my consent for grant of the prayer made in the above Writ Petition.*

10. *I say that for the purpose of carrying out the effect of this Affidavit, I shall provide full cooperation and shall make myself available to be present physically or virtually before the Hon'ble High Court, any other court or at the police station and in case I fail to remain present before the above authorities, as and when required, then the Petitioner will be at liberty to produce the present affidavit before the above authorities, including the Hon'ble High Court, Bombay and get the FIR quashed unilaterally.*

11. *That whatever is stated in foregoing paragraphs is true and correct to the best of my knowledge and belief and which I believe to be true and hence I have signed hereunder.*

5. Since parties have amicably resolved the dispute and 2nd respondent has filed affidavit and has given no objection for quashing the MECR/FIR No. I-65 of 2020 dated 09.03.2020 registered under Section 420, 405, 406, 415, 477(a), 504 read with

34 of IPC at Kasarwadavali Police Station, Thane, no fruitful purpose would be served by continuing the aforesaid investigation in MECR/FIR No. I-65/2020. In view of stand taken by the 2nd respondent chances of conviction of petitioners are remote and bleak.

6. 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

1 2012 (10) SCC 303

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.

7. In the light of discussion in foregoing paragraphs, to secure the ends of justice and prevent the abuse of the process of the Court, we are of the opinion that the petition deserves to be allowed. Hence, the following order:-

ORDER

1. The writ petition is allowed in terms of prayer Clause (b), subject to depositing of costs by the petitioners. Prayer clause (b) reads as under:-

(b) That this Hon'ble Court be pleased to quash and set aside (in full) the MECR/FIR No. I-65 of 2020 registered dated 9-3-2020 registered U/s 420, 405, 406, 415, 477(a), 504 r/w. 34 of IPC at Kasarwadavali Police Station, Thane.

2. Petitioners to deposit amount of Rs. 50,000/- in the account of Children Aid Society, within three week from today. The details of said account are as under:-

Name of Bank of Account: Children Aid Soc
Donation
Bank Account No.: 02370100005612
Bank Name: UCO Bank
Branch: Matunga
Mumbai.
IFSC Code: UCBA0000237

3. Needless to observe that this order will take effect only after depositing the cost amount by the petitioners in the aforesaid account.
4. Learned counsel for the petitioners to place on record proof of deposit of costs in the Registry.
5. Rule made absolute to above extent.
6. The writ petition stands disposed of.
7. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)