

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2495 OF 2019

- | | | |
|----|--|---|
| 1] | Shri Abhay Rajaram Ahire |] |
| | Age : 37 YEARS, Occ : Private |] |
| | |] |
| 2] | Sou Minakshi Rajaram Ahire, |] |
| | Age : 58 years, occ : Retired |] |
| | |] |
| 3] | Shir Rajaram Trumbak Ahire |] |
| | Age : 70 years, occ : Retired |] |
| | |] |
| | All Residing at – Astitav, 4B, Panchshil |] |
| | Co-op. HSC, K. J. Mehta Road, |] |
| | Chavan Mala, near Jaltaran, |] |
| | Nashik Road, Taluka – Nashik – 422 102 |] |
| | |] |
| 4] | Shri Rahul Rajaram Ahire |] |
| | Age 38 Years, Occ : Service |] |
| | |] |
| 5] | Sou. Snehal Rahul Ahire, |] |
| | |] |
| | Age 32 years, Occ : Housewife |] |
| | Nos. 4 to 5 residing at – 706, |] |
| | Sidheshwar Towers, Flat No.19, |] |
| | Sector 19, Kamothe – 410 209 |] |
| | |] |
| 6] | Sou Vandana Pravin Kambale |] |
| | Age : 39 years, occ : Government |] |
| | Residing at B-289/3, Government |] |
| | Colony, Bandra (E), Mumbai – 51 |] |
| | |] |

]..... Petitioners
] (Original Accused
] Accused Nos.1 & 6)

versus

- | | | |
|----|------------------------------------|---|
| 1] | The State of Maharashtra |] |
| | Through Khadakpada, Police |] |
| | Station, Kalyan District – Thane |] |
| | |] |
| 2] | Sou Pooja Abhay Ahire |] |
| | Age : 32 years, Occ : Doctor, |] |
| | |] |
| | Residing at D-201, Kasturi Lawans, |] |
| | |] |

]..... Respondents.

Near Sandip Hotel, B-ward office road,
behind, Pulse Hospital, kalyan (W)](Respondent No.2
]Orig. Complainant)

Ms. Chaitrali A Deshmukh for the Petitioners.
Mr. K V Saste, APP for the Respondent No.1/State.
Ms. Meghna A Gowalani for Respondent No.2.
Respondent No.2 present in Court.

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

DATE : 29th September 2021

JUDGMENT : (PER S. S. SHINDE, J)

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

2 The Criminal Writ Petition has been filed by the Petitioners for the following substantial relief :-

(b) after going through the records and proceedings this Hon'ble Court be pleased to quash and set aside the FIR No.0074 dated 25.2.2019 vide CR No.I-74 of 2019 registered at Khadakpada Police Station, Kalyan, District Thane, against the Petitioners.

3 The learned counsel appearing for the Petitioners and the learned counsel appearing for the 2nd Respondent jointly submit that the parties have amicably settled the dispute and proceedings have been instituted before the Family Court, Nashik for divorce by mutual consent.

4 The learned counsel appearing for the 2nd Respondent has

tendered across the bar the affidavit of the 2nd Respondent. The same is taken on record.

5 The 2nd Respondent is present before this Court. She is identified by her advocate. When we interacted with her, she stated that it is her voluntary act to enter into such settlement and join the prayer of the Petitioners for quashing the impugned FIR. She further stated that she will receive the amount of Rs.15,00,000/- on conclusion of the proceedings instituted before the Family Court, Nashik.

6 Paragraphs 2 to 12 of the affidavit of the 2nd Respondent read thus :-

- “2 *I say and declare that Mr. Abhay Rajaram Ahire, Petitioner No.1 along with other Petitioners have filed this Criminal Writ Petition before this Hon’ble Court for quashing the FIR bearing No.0074/2019 dated 25.02.2019, registered at Khadakpada Police Station, Kalyan for the offences punishable under Section 498(A), 406, 354, 323, 504, 506 read with section 34 of Indian Penal Code 1860 as the same essentially arises out of the matrimonial disputes between us.*
- 3 *I say and declare that the said dispute was a matrimonial dispute and the same has been settled between us in particular by filing consent terms before Ld. Family Court Nashik in Marriage Petition No.363/2018 filed by the Petitioner No.1. Hereto annexed and marked EXHIBIT “A” is the copy of the Consent Terms dated 17.09.2021.*
- 4 *That Pursuant to the aforesaid annexed Consent Terms, I agree and hereby declare that the Petitioners have deposited the permanent alimony of Rs.15,00,000/-*

(Fifteen Lakh Rupees only) through Demand Draft (DD) bearing number 952110 of Canara Bank Jail Road, Nashik Road in Ld. Family Court, Nashik.

- 5 *I say and declare that I will not assert any claim or any maintenance or damages and wave my rights with respect to maintenance after receiving/withdrawing the permanent alimony from Ld. Family Court, Nashik. I will not institute any other legal proceedings against the Petitioner and his family.*
- 6 *I say and declare that I hereby withdraw all the allegations made against the Petitioners in the said FIR bearing No.0074/2019 registered at Khadakpada Police Station, Kalyan. I further state and declare that I do not intend to pursue the said complaint any further as we have arrived at amicable settlement.*
- 7 *I say and hereby declare that even my husband i.e. Petitioner No.1 is ready to withdraw all the allegations if any made against me. I am made to understand by my husband Petitioner No.1 that he will withdraw all the case if any filed against me.*
- 8 *I say and hereby declare that I am executing this affidavit in support of my contention that now I do not have any complaint and/or grudges against the Petitioners and I have consented to withdraw all the allegations voluntarily in view of the amicable settlement. I further say and declare that I give my voluntary consent for the quashing of the said FIR bearing No.0074/2019 dated 25.02.2019 registered at Khadakpada Police Station, Kalyan, which is the subject matter of this Petition.*
- 9 *I agree and hereby declare that I shall appear before the Hon'ble High Court, Bombay in this Petition filed by my husband as and when the aforesaid Writ Petition is listed before the Hon'ble High Court and shall withdraw my aforesaid complaint and give No objection/Consent for quashing of the FIR No.0074/2019 of Khadakpada Police Station, Kalyan.*
- 10 *I agree and hereby declare that it is agree and*

understood by and between the parties that the above constitutes the entire settlement of all disputes between the parties hereto and the parties shall not have any further legal claim or demand against each other of any nature whatsoever between them and otherwise.

11 *I agree and hereby declare that I have understood the contents of this affidavit and the contents are explained to me in Marathi and English and thereafter I am giving my consent to quash the said complaint registered at Khadakpada Police Station, Kalyan, bearing FIR No.503/2019.*

12 *I say that we have settled the matter amicably and I do not want to prosecute the applicant further and do not have any objection if the present proceeding is quashed by this Hon'ble Court."*

7 Since the Petitioners and the 2nd Respondent have amicably settled the dispute and the 2nd Respondent has filed the affidavit thereby giving no objection for quashing the impugned FIR, and during the course of interaction the 2nd Respondent stated that it is her voluntary act to enter into such settlement and join the prayer of the Petitioners for quashing the impugned FIR, no fruitful purpose would be served by continuing the further investigation in FIR No.74 of 2019, dated 25/02/2019 registered with Khadakpada Police Station for the offences punishable under Sections 498-A, 406, 354, 323, 504, 506, 34 of the Indian Penal Code.

8 In view of the stand taken by the 2nd Respondent to join the prayer of the Petitioners for quashing the impugned FIR, the chances of conviction of the Petitioners would be bleak and remote.

9 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.

10 In the light of the discussion in the foregoing paragraphs and keeping in view the averments in the affidavit filed by the 2nd Respondent, and the statements made by her during the course of interaction by this Court, we

1 2012 (10) SCC 303

are of the view that, in order to secure the ends of justice and to prevent the abuse the process of law/court, it would be appropriate to quash and set aside the impugned FIR.

11 In that view of the matter, the Writ Petition deserves to be allowed and the same is allowed in terms of prayer clause (b) which read thus :-

(b) after going through the records and proceedings this Hon'ble Court be pleased to quash and set aside the FIR No.0074 dated 25.2.2019 vide CR No.I-74 of 2019 registered at Khadakpada Police Station, Kalyan, District Thane, against the Petitioners.

12 Rule made absolute in the aforesaid terms. The Writ Petition stands disposed of accordingly.

13 We impress the Family Court, Nashik to dispose of the pending proceedings as expeditiously as possible and preferably in near future. Needless to observe that the parties shall extend full cooperation for early disposal of the proceedings pending before the Family Court, Nashik.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]