

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

CRIMINAL WRIT PETITION NO. 2297 OF 2018

1. Shri. Manish s/o. Sushilkumar Modi
Aged about 38 years, adult, India.
Inhabitant, Occ. Business.
2. Smt. Sushila w/o. Sushilkumar Modi
Aged about 63 years, Indian Inhabitant.
3. Sushilkumar Mohanlal Modi
Aged about 65 years, adult, Indian
Inhabitant, All are residing at E-31,
Aakash Apartments, Adjacent to Chief
Justice Bungalow Bodakdev Judges
Bungalow Road, Ahmedabad- 380 054.

...PETITIONERS

Versus

1. The State of Maharashtra
Through Inspector Inchage, Oshiwara
Police Station.
2. Mrs. Nidhi W/o Manish Modi
Adult Indian Inhabitant, residing at 903/A,
Highland Park, Lokhandwala Complex,
Andheri (W), Mumbai- 400 053.

...RESPONDENTS

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Mr. Ashok M. Saraogi a/w. Mr. Sushil Upadhyay for Petitioners.
Mrs. Taubon F. Irani for Respondent No. 2.
Mrs. Nidhi Modi Respondent No. 2 present in the Court.
Mr. J.P. Yagnik, APP for State.

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

DATE : 15th FEBRUARY 2021.

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

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

2. At the outset learned counsel appearing for 2nd respondent has tendered across the bar consent terms, the same are taken on record and marked as 'X' for identification.

3. Learned counsel appearing for the petitioner has tendered across the bar a photo copy of the demand draft of Rs. 2 Crore 10 Lacs which is to be paid to Respondent No. 2 before the Family Court, Bandra. The photo copy of the said demand draft is taken on record. Learned counsel appearing for the petitioner further submits that one hard disk is already returned to 2nd respondent. Learned counsel for 2nd respondent submits that the receipt will be given to the petitioner for return of said hard disk.

4. Learned counsel appearing for petitioners and 2nd respondent submits that the parties have amicably settled the dispute and to that effect consent terms are filed before the Family Court, Bandra.

5. Learned counsel for 2nd respondent has tendered across the bar, affidavit of 2nd respondent. The same is taken on record.

6. Learned counsel appearing for Petitioner submits that the learned Single Judge of this Court (Coram: A.S. Gadkari, J.) on 05.04.2019 directed the petitioner herein to deposit Rs. 90 lacs in the Registry of this Court with further undertaking that the applicant therein i.e. petitioner herein to continue to pay Rs. 50,000/- towards maintenance of his child and for any reason if the child requires hospitalization and other medical expenses, the applicant No. 1 will reimburse the same, subject to production of bills from the first informant. Paragraph 4 of the said order is reproduced hereinbelow:-

4. In the said affidavit, apart from giving an undertaking that, the applicants will deposit the said amount of Rs. 90.00 lakhs in the Registry of this Court, a further undertaking is given that, without prejudice to their rights and contentions in the present proceedings before this Court, the applicant No. 1 will continue to pay Rs. 50,000/- towards the maintenance of his child and for any reason if the child requires hospitalization and other medical expenses, the applicant No. 1 will reimburse the same, subject to production of bills from the first informant.

Learned counsel for the petitioners submit that the said amount along with accrued interest thereon deposited by the petitioner be adjusted in the total amount of Rs. 3 Crore which is supposed to be paid by the Petitioner to Respondent No. 2.

7. The Respondent No. 2 has filed affidavit. Paragraphs 1 to 5 of the said affidavit reads as under:-

1. I say that I am the original complainant in FIR bearing no. 152 of 2018. I say that the Petitioner and I have arrived at a compromise/settlement and have filed consent terms on 30th January, 2021 before the Hon'ble Family Court at Bandra, Mumbai, in petition bearing no. A-2571 of 2019, fled by the Petitioner seeking reliefs under the provisions of the Hindu Marriage Act, 1955.

2. I say that in lieu of clause no. (v) under the caption **MISCELLANEOUS** of the said consent terms, and in compliance thereof, I hereby give my consent to the quashing of the said FIR bearing no. 152 of 2018 against the accused persons.

3. I say that as per clause no. (ii) & (iii) under the caption **ALIMONY/MAINTENANCE/RESIDENCE/STRIDHAN** of the said consent terms, I am entitled to withdraw the amount of Rs. 90,00,000/- (Rupees Ninety Lakhs Only), along with the interest accrued thereon. I say that the said order of depositing the amount came to be passed in Anticipatory Bail Application No. 1561 of 2018.

4. I further say that the Petitioner is required to hand over to me the hard drive of my computer as per clause no. (iv) under the caption **ALIMONY/MAINTENANCE/RESIDENCE/STRIDHAN** of the said consent terms. I say that I have received the same today and have handed over the receipt to the Petitioner in compliance of the said clause no. iv.

5. I say that whatever stated herein above is true to my own personal knowledge and I believe the same to be true and correct.

8. We have interacted with Respondent No. 2. She stated that it is her voluntary act to enter into the settlement and file consent terms before the Family Court, Bandra. She has no objection for quashing the impugned FIR.

9. Since the petitioners and Respondent No. 2 have amicably settled the dispute and consent terms are filed before the Family Court, Bandra, no fruitful purpose will be served by continuing the investigation arising out of FIR No. 152/2018 registered with Oshivara Police Station for the offences punishable under Sections 498-A, 406, 313, 506, 500, 34 of IPC.

10. In that view of the affidavit filed by 2nd respondent before this Court, it is certain that she is not going to support the allegations in the FIR and consequently, chances of conviction of the petitioners are remote and bleak.

11. The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ 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

1 2012 (10) SCC 303

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.

12. In the light of submissions made across bar, keeping in view the consent terms arrived between the parties before the Family Court, Bandra and affidavit filed by 2nd respondent and the fact that the petitioners are ready to give Rs. 3 Crore to Respondent No. 2, we are of the opinion that the petition deserves to be allowed. However, before allowing the petition, we direct the Registry of this Court to transfer amount of Rs. 90.00 lakhs with accrued interest thereupon which has been deposited by the Petitioner in Anticipatory Bail Application No. 1561 of 2018, to Respondent No. 2 forthwith on making formal application, to her account by way of RTGS.

13. As already agreed between the parties, the petitioner will pay remaining amount of Rs. 2 Crore 10 lakhs to Respondent No. 2 before the Family Court, Bandra.

14. In the light of discussion in foregoing paragraphs, to secure the ends of justice and prevent the abuse of the process of the law/court, the petition deserves to be allowed. Accordingly, the writ petition is allowed in terms of prayer clause (b). Rule made absolute to above extent. The writ petition stands disposed of.

15. The parties shall strictly abide by the consent terms filed by them before the Family Court, Bandra. All parties to act upon an authenticated copy of this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)