

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

CRIMINAL APPLICATION NO. 570 OF 2021

1. Mrs. Sangetha Siby,
Age : 44 years, Occu. Housewife
R/o.313, Shubrah Pushpanjali Building,
Sector-6, Shrinagar, Thane
2. Sumeet Jagdish Anand
Age : 28 years, Occu. Service
R/o.402, New Kailash Apartment,
Kolsewadi, Kalyan, Thane.
3. Kumari Selby Siby
Age : 27years, Occu. Service
R/o.313, Shubrah Pushpanjali Building,
Sector-6, Shrinagar, Thane

...Applicants
(Ori. Accused)

Versus

1. The State of Maharashtra
At the instance of Shrinagar Police
Station
2. Siby Kora,
Age : 56 years,
R/o.313, Shubrah Pushpanjali Building,
Sector-6, Shrinagar, Thane

...Respondents

Mr. Jigar K. Agarwal, a/w Ms. Neha Rane and Ms. Tanvi Patil,
i/b Mr. Prasad Panchal, for the Applicants.

Mrs. S. D. Shinde, APP for the State/Respondent no.1.

Mr. B. G. Tangsali, a/w Mr. Gaurav Ombale, for Respondent
no.2.

Respondent no.2 present in Court.

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

DATED: 18th AUGUST, 2021.

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. This application under Section 482 of the Code of Criminal Procedure, 1973 (“the Code”) is preferred for quashing CC No.39/SC/2020, pending on the file of Court of Session, Thane, arising out of FIR No.80/2016, dated 26th March, 2016, lodged with Shrinagar Police Station, Thane, for the offences punishable under Sections 452, 394, 397, 355, 324, 323, 326, 342, 506 read with 34 of the Indian Penal Code, 1860 (“the Penal Code”) by respondent no.2 – the first informant, on the basis of the settlement arrived at between the applicants – accused and the first informant.

3. The marriage of applicant no.1 Sangetha was solemnized with respondent no.2 Siby Kora on 12th October, 1992. Applicant no.3 Kumari Selby Siby and Anson were born out of the wedlock. It seems that after cohabitation for almost 25 years, differences arose between applicant no.1 and respondent no.2. On 26th March, 2016, respondent no.2 lodged a report with Shrinagar Police Station with the allegations that on 25th March, 2016 when he had returned home from his native place in Kerala unannounced, he had noticed Mahendra Pardeshi coming out of his home and had thus snapped Mahendra’s photo on mobile phone. At about 8.30 pm. on the same day, his wife and daughter alongwith applicant no.2 Sumeet and the

said Mahendra Pardeshi barged into his house and started assaulting him by fist and kick blows amidst questioning as to why he had snapped the photo of Mahendra. During the course of the assault, he was allegedly robbed of a mobile phone, ring and keys of the house. His clothes were torn of and he was dragged to Shrinagar Police Station. On the strength of the said report crime was registered at Shrinagar Police Station for the offences punishable under Sections 452, 394, 397, 355, 324, 323, 326, 342, 506 read with 34 of the Penal Code. Post investigation, charge-sheet came to be lodged against the applicants, leading to Sessions Case being CC No.39/SC/2020.

4. The applicants have approached the Court with the assertions that the dispute between applicant no.1 and respondent no.2 has been amicably resolved. They have been residing separately since five years and have also decided to dissolve the marriage by mutual consent. Thus, respondent no.2 – the first informant has no objection for quashing the said proceeding.

5. Mr. Agarwal, the learned Counsel for the applicants and Mr. Tangsali, the learned Counsel for respondent no.2 made a joint statement that the applicants and respondent no.2 have

amicably resolved the dispute and in pursuance thereof respondent no.2 has filed an affidavit.

6. Mrs. Siby Kora – respondent no.2 appeared before the Court. Upon being inquired, respondent no.2 specifically stated that he has decided to settle the dispute with the applicants voluntarily and filed the Affidavit out of his own volition. There is no coercion or duress. Respondent no.2 admitted the contents of the affidavit and execution thereof. Respondent no.2 is identified by Mr. Tangsali, the learned Counsel for respondent no.2.

7. Paragraphs 4 to 8 of the Affidavit read as under:

“4. I say that petitioner no.1 and I got married on 12-10-1992 at Shri Ram Mangal Karyalay Dadar. That out of the said wedlock two children were born, petitioner no.3 and Anson Siby.

5. I say that petitioners and I have already arrived to an amicable settlement by way of consent terms before the National Lok Adalat at Family Court, Thane held on _____ and that I does not wish to proceed with the present criminal matter against the petitioners.

6. I say that as per the Consent Terms I and petitioner no.1 undertook for settlement for mutual consent divorce. That I am petitioner no.1 have filed our petition for mutual divorce at Family Court Thane on 20th June, 2021.

7. I say that I am hereby willing to withdraw the entire adverse allegations against all the petitioners. That I have mutually agreed with the petitioners and all my grievances are settled with the petitioners.

8. I say that I am preparing this affidavit to produce before this Hon’ble High Court to say that I have no objection if the said FIR would be quashed with the permission of this Hon. Court.”

8. In the light of the aforesaid submissions, statements and affirmations in the affidavit, we have perused the material on record, especially, the first information report. It appears that marital discord struck applicant no.1 and respondent no.2 after almost 25 years of cohabitation. It seems that with the escalation of confrontation, children also took sides. In the process the allegations and counter-allegations seem to have been made. From the perusal of the statement of the first informant – respondent no.2, recorded under Section 164 of the Code, it appears that respondent no.2 alleged that the incident occurred when he was being forced to consume liquor so as to falsely implicate him for the offence of rape. It seems there was a competing counter version.

9. Eventually, applicant no.1 and respondent no.2 seem to have resolved the dispute. They made a joint statement before the Court that they have decided to dissolve the marriage with mutual consent. In the light of the aforesaid circumstances, though there are serious allegations of robbery yet the fact that the genesis of the alleged occurrence was in the matrimonial dispute between the applicant no.1 and respondent no.2 cannot be lost sight of. In view of the settlement arrived at between the parties, the continuation of the prosecution may not yield any

fruitful purpose. It is very unlikely that respondent no.2 would support the prosecution and it would end in conviction. The continuation of the prosecution, in the circumstances of the case, would put an unnecessary burden on the criminal justice system.

10. A profitable 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 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.”

11. The aforesaid propositions, in our view, apply with equal force to the facts of the case at hand. The dispute has its genesis in the marital discord. Applicant nos.1 and 3 are the

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wife and daughter of respondent no.2. They have decided to bury the hatchet. Applicant no.1 and respondent no.2 have decided to amicably part ways. In this view of the matter, the continuation of the prosecution would cause grave prejudice to the parties and may also amount to abuse of the process of the Court. In contrast, the ends of justice would be met if the prosecution in Sessions Case CC No.39/SC/2020 is quashed and set aside.

12. Hence the following order:

: ORDER :

- (i) The application stands allowed.
- (ii) Sessions Case CC No./39/SC/2020, pending on the file of Court of Session, Thane, arising out of FIR No.80/2016 dated 26th March, 2016, lodged with Shrinagar Police Station, Thane, stands quashed and set aside.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]