

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.723 OF 2021

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Amrut Vijay Shinde and Others

...Applicants

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Vincent D'silva, for the Applicants.

Mr. Prashant Pandey, for Respondent No. 2.

Mrs. S.D. Shinde, APP for the Respondent-State.

Ms. Ashwini Amrut Shinde, Respondent No. 2 present.

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

DATE : **SEPTEMBER 29, 2021
(THROUGH VIDEO CONFERENCING)**

ORAL JUDGMENT : (Per N.J.Jamadar, J.)

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

2. This is an application for quashing the prosecution, being Criminal Case No. 34/PW/2021, arising out of First Information Report No. 121 of 2019 registered with R.A.K. Marg police station, Mumbai for the offences punishable under sections 377, 498-A, 324, 323, 504 read with 34 of the Indian Penal Code, 1860 (the Penal Code) at the instance of respondent No. 2- first informant.

3. The marriage of the respondent No. 2 was solemnized with

applicant No. 1 on 8th February, 2015. Post marriage, there was marital discord. Eventually, the respondent No. 2 lodged report with R.A.K. Marg police station alleging matrimonial cruelty at the hands of applicant No. 1; her husband, and applicant Nos. 2 and 3; father-in-law and mother-in-law, respectively.

4. The learned counsel for the applicants No. 1 and respondent No. 2 make a joint statement that during the pendency of this application, the matrimonial dispute between applicant No. 1 and respondent No. 2 has been amicably resolved. Pursuant thereto, applicant No. 1 and respondent No. 2 have obtained a decree of divorce by mutual consent. Rupees 23 lakhs has been paid to respondent No. 2 by way of permanent alimony. The respondent No. 2 therefore does not desire to prosecute the applicants any further. Thus, the respondent No. 2 has no objection to quash the prosecution.

5. Respondent No. 2 appeared before the Court. She has tendered an affidavit of consent. It is taken on record.

6. We have interacted with respondent No. 2. Respondent No. 2 submitted that she has decided to resolve the dispute with the

applicants voluntarily. Marriage between the applicant No.1 and respondent No. 2 has been dissolved by a decree of divorce by mutual consent. She has received the sum of Rs. 23 lakhs towards permanent alimony. Thus, she consents for the quashing of the prosecution. There is no coercion or duress.

7. Paragraph Nos. 3 to 5 of the affidavit of respondent No. 2 read as under:

3] I say that following our amicable settlement, the divorce petition filed by applicant No. 1 being petition No. A-653 of 2018 in the Family Court at Bandra, has been compromised by way of consent terms. The petition has been converted into divorce by mutual consent and we both have filed consent terms on 22/06/2021 in the said petition and the petition has been disposed off on 22/06/2021. As per the consent terms, executed between me and the applicant No. 1, he the applicant No. 1 has agreed to pay me a sum of Rs. 23 lakhs as permanent maintenance/ one time settlement amount. Out of the said amount, I have received from applicant No. 1 a sum of Rs. 20 lakhs by way of four demand drafts, each of Rs. 5 lakhs as per clause No. 5 of the consent terms. The balance of Rs. 3 lakhs shall be paid by the applicant No. 1 by way of demand draft dated 17/06/2021, bearing No. 569687 and drawn on Bank of Maharashtra, Bhoiwada branch, Mumbai. A copy of the said consent terms is at Exhibit B to the criminal application for

quashing the FIR.

4] As agreed by me, I have already withdrawn the domestic violence case No. 38/DV/2018 filed by me against the applicant and others in 29th Metropolitan Magistrate Court, Dadar, Mumbai.

5] I have withdrawn domestic violence complaint case and also the appeal filed by me before the Sessions Court. I say that my certain belongings are left behind in my matrimonial home. I will be taking away and shift the same within the seven days from the order that will be made in the above quashing petition by this Court. I say that, I have personally verified my belongings kept in my matrimonial home. The same are as per the list annexed to this affidavit and marked as Exh. A.

8. In the light of the aforesaid submissions, statements and assertions in the affidavit of respondent No. 2, it becomes clear that the genesis of the offence was in the marital discord and the parties have amicably resolved the dispute. The marital bond between the applicant No. 1 and respondent No. 2 has been disrupted. The dispute is resolved in all its facets.

9. In this background, continuation of the prosecution would

serve no fruitful purpose. It is very unlikely that respondent No. 2 would support the prosecution and it would end in conviction. Continuation of the prosecution, on the other hand, would cause prejudice to the applicants No. 1 and respondent No. 2 as well. It may amount to abuse of the process of the Court.

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*¹, wherein a Three Judge Bench of the Supreme Court, expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

61. But the criminal cases having overwhelmingly and predominantly 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 offences 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, High Court may quash 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 criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the

1 (2012) 10 Supreme Court Cases 303.

answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

11. The aforesaid propositions apply with equal force to the facts of the case in hand. Since the genesis of the offence is in matrimonial dispute, prosecution can be legitimately quashed on the basis of the settlement arrived at between the parties. Thus in order to secure the ends of justice and prevent the abuse of the process of the Court, the prosecution deserves to be quashed. Hence, the following order.

ORDER

1] The application stands allowed in terms of prayer clause (a) which reads as under:

(a) That the records and papers of Criminal Case No.34/PW/2021 pending on the file of 13th Additional C.M.M. Court, Bhoiwada, Dadar, Mumbai against the applicants, be called for, and after examining the same, the said case be quashed and set aside.

2] Rule made absolute in aforesaid terms.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)