

Mandira
Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1016 OF 2021

Mihir Bharat Shah	]	
Residing at Plot No.1005, 10 th Floor,	]	
Sector 9, Vishram Tower HSG Society,'	]	
Shree Nagar Wagle Estate,	]	
Thane (West)	]	
	]	.. Petitioner

VERSUS

1. The State of Maharashtra	]	
	]	
2. Mrs.Ankita Mihir Shah	]	
Residing at : Plot No.101, Building	]	
No.1/B, 10 th Floor, Kalpataru Hills HSG	]	
Society, Opposite Tikujiniwadi,	]	
Manpada, Thane (East)	]	.. Respondents

Mr.S.R.Phanse for the Petitioner.

Ms.Vriddhi Maria for Respondent No.2.

Respondent No.2 present in Court.

Mr.J.PYagnik, A.P.P for Respondent No.1/State.

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

DATED : 01st MARCH, 2021

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

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

2. Learned counsel appearing respondent No.2 has tendered

across the bar, affidavit of respondent No.2. Same is taken on record. It is submitted by learned counsel appearing for the petitioner and respondent No.2 that the parties have amicably settled the dispute and to that effect, consent terms have been arrived at between the parties and the said consent terms are placed on record. Para 5 of the said consent terms placed on record at Exhibit 'C' reads thus :-

5. That the Respondent No.2 and the present Petitioner have settled their dispute amicably on such terms and conditions as follows:

A) That in pursuance of the amicable settlement arrived at between both parties namely, Respondent No.2 and the present Petitioner, it has been agreed that although the custody of the children shall remain with Respondent No.2, the Petitioner shall be permitted to meet their children on every Sunday from 5pm to 9pm, subject to his as well as the convenience of the children. Further, in pursuance of the said term of settlement, Respondent No. 2 shall drop the children at 'Hiranandani Meadows' at 5pm and shall pick them up at 9pm, on every Sunday.

B) That in pursuance of the said amicable settlement, both, the Petitioner as well as Respondent No.2, have mutually agreed that they shall not claim any maintenance from each other.

C) That in pursuance of the said amicable settlement, Respondent No.2 has filed the present Petition for quashing of the proceedings pending before the Ld. 2nd Joint Civil Judge J.D. J.M.F.C., Thane in R.C.C. No. 1523/2020, arising out of the F.I.R. bearing No.0006/2020, dated 08.01.2020 and registered with Chitalsar Manpada Police Station. Furthermore, both parties have mutually agreed that they shall file their evidence and proceed to finalise the Marriage Petition bearing No. F-190 of 2020 only upon quashing of the said proceedings pending before the Ld. 2nd Joint Civil Judge (J.D) J.M.F.C., Thane in R.C.C. No.1523/2020, arising out of F.I.R. bearing No. 0006/2020 and dated 08.01.2020.

D) That in pursuance of the said amicable settlement, both parties have mutually agreed that the Petitioner shall transfer his entire share, right, title and interest i.e. his 50% share in the Flat bearing No.101, 1B, Kalpataru Hills, Opposite Tikujiniwadi, Thane- (West), in the names of their children and that Respondent No.2 shall enter into an appropriate agreement by way of Gift Deed on behalf of their children. It is pertinent to note that upon execution and the registration of the said Gift Deed in the manner mentioned herein after, the Petitioner shall have no share, right, title and interest in the said Flat with respect to his 50% share therein. Furthermore, it has been agreed that Respondent No. 2 will prepare the said Gift Deed and shall thereafter inform the Petitioner as regards the same. The Petitioner undertakes to remain present before the Registrar for execution and registration of the said Gift Deed. Both parties further agree that all and any expenses in the nature of Stamp duty, Registration Charges, Local Body Tax, Cess etc, as may be applicable for due registration of the said Gift Deed, shall be borne by and paid for by both parties in equal proportion; and that the fees for drafting the said Gift Deed and other Miscellaneous charges shall be borne by and paid for by respondent No.2 alone. It is further agreed and undertaken that the said Gift Deed shall be executed and registered by the parties within 15 days from the date of Order of the Hon'ble High Court with respect to quashing of the proceeding pending before the Ld. 2nd Joint Civil Judge (J. D) J.M.F.C., Thane in R.C.C. No. 1523/2020, arising out of the F.I.R. bearing No.0006/2020 and upon intimation given by the Respondent No.2 thereby calling the Petitioner for registration of Gift Deed after the Order of quashing. In the event of the proceedings being quashed and upon intimation given by the Respondent No.2 as aforesaid if the Petitioner fails to execute the said Gift Deed, the Respondent shall be at liberty to approach the Hon'ble High Court or any other competent authority to avail appropriate remedy in accordance with Law.

E) That as stated hereinabove, Respondent No.2 had filed an Application under the provisions of the Protection of Women from Domestic Violence Act, 2005, bearing No. 23 of 2020

before the Hon'ble Judicial Magistrate First Class, Thane. In pursuance of the said amicable settlement, both parties have agreed that Respondent No.2 shall simultaneously, on the day the Marriage Petition bearing No. F-190 of 2020 is allowed, withdraw the said Application unconditionally.

F) That in pursuance of the said amicable settlement between both parties namely, the Petitioner and Respondent No. 2, the Petitioner herein has agreed to pay Society Maintenance Arrears amounting to Rs.60,000/- (Rupees Sixty Thousand Only), within 15 days from the date of quashing of the proceedings pending before the Ld. 2nd Joint Civil Judge (J. D) J.M.F.C., Thane in R.C.C. No. 1523/2020, arising out of the F.I.R. bearing No. 0006/2020, and that the remaining arrears shall be paid by Respondent No. 2. Both the parties have also agreed that apart from the said payment of Rs. 60,000/- (Rupees Sixty Thousand Only), the Petitioner shall not be obliged to pay any further amount towards Society Maintenance outgoing and that the said expense shall thereafter be the sole responsibility of Respondent no.2 Both parties further agree that in the event of the Petitioner failing to make timely payment in respect of the said amount of Rs. 60,000/- (Rupees Sixty Thousand Only) the Petitioner shall bear the expense in respect of payment of interest which shall be charged in respect of delayed payment. In the event the proceeding are quashed as aforesaid and the Petitioner fails to make payment of the abovementioned amount within 15 days of the date of the said Order, the Respondent shall be at liberty to approach the Hon'ble High Court or any other competent authority to avail appropriate remedy in accordance with Law.

G) That Respondent No.2 submits that all her Stridhan, Gold Articles and Clothes are in her custody.

H) That in pursuance of the said amicable settlement between both parties, it has been agreed that Respondent No.2 shall not, in the future, make any claim in respect of Maintenance, Remuneration, Alimony, Stridhan, Movable or Immovable Property from the Petitioner, either for herself or for their children and the children will be maintained by the Respondent No. 2 only.

I) That in pursuance of the said amicable settlement between both parties namely, the Petitioner and Respondent No.2, it has been agreed that neither Respondent No.2, nor their Children, shall henceforth i.e in the future, have any claim, of any nature whatsoever, in respect of the property of the Petitioner, irrespective of it being self-earned, ancestral or bequeathed to the Petitioner from the respective family members of Petitioner.

J) That both parties have already exchanged all their respective belongings, goods, articles and items any they shall not claim anything from each other in the future.

K) That in pursuance of the said amicable settlement, both parties have agreed that they shall not claim any Right, Title and/or Interest in any Moveable or Immovable properties belonging to each other, except for that what has been mentioned hereinbefore.

L) That in pursuance of the said amicable settlement , both parties have agreed that henceforth, they shall not physically, mentally and emotionally harass each other. Furthermore, both parties have agreed to withdraw all the allegations made by them against each other and also undertake to refrain from making any Allegations, Complaints or Petitions against each other in the future.

M) That in respect of the said amicable settlement, both parties have further agreed that they shall not enter upon any portion of the other parties respective houses, or communicate in any from whatsoever, including personal, oral or written, or electronic or telephonic contact and/or commit any act which may cause hardship or inconvenience to the other party. The present Petitioner and Respondent No.2 have agreed that upon observing compliance of the present Consent Terms, the said parties will henceforth, not interfere in each other's lives. The Respondent No.2 further agrees that in the event she remarries, she shall not reside in the flat baring No. 101, 1B, Kalpataru Hills, Opposite Tikujini Wadi, Thane West along with her spouse."

3. Respondent No.2 is present before this Court. She has been identified by her counsel. She has stated that subject to compliance of the consent terms and in particular, condition No.5(D) of the consent terms, she has no objection for quashing the impugned FIR and the charge-sheet.

4. The Hon'ble Supreme Court in the case of **Gian Singh 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 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, 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 has also held that 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.

5. Since the petitioner and respondent No.2 have amicably

¹ 2012 (10) SCC 303

settled the dispute and to that effect, consent terms have been entered into between the petitioner and respondent No.2 and on compliance of said consent terms, respondent No.2 has no objection for quashing the FIR and the charge-sheet impugned in this petition, no fruitful purpose will be served by continuing further proceedings in R.C.C.No.1523 of 2020 arising out of the F.I.R.No.0006 of 2020 registered on 8th January, 2020 at Chitalsar Manpanda Police Station, Thane. In view of the settlement, respondent No.2 would not participate in the pending proceedings and further continuation of said proceedings would tantamount to abuse of process of the Court.

6. In that view of the matter and subject to adherence/compliance of the consent terms, as assured by the learned counsel appearing for the parties, the petition deserves to be allowed in terms of prayer clause (a), which reads as under :-

“a) This Hon’ble Court be pleased to quash the proceedings pending before the Ld. 2nd Joint Civil Judge (J.D.) J.M.F.C., Thane in R.C.C. No.1523/2020 arising out of the F.I.R. bearing C.R.No.0006 of 2020.”

7. Rule is made absolute in above terms. The writ petition stands disposed of accordingly.

8. However, we make it clear that in case of any breach of the conditions of the consent terms, the order passed today shall stand recalled. The parties shall strictly abide by the consent terms.

9. List the petition under caption “for compliance” on 5th April, 2021 at 2.30 p.m.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)