

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

CRIMINAL APPLICATION NO. 587 OF 2021

1) Mr. Rahul Prakash Kale,
Aged : 40 years, Occ : Nil,

2) Prakash Bhikaji Kale,
Aged : 69 years, Occ : Retired.

3) Sheela Prakash Kale
Aged 63 Years, Occ : Housewife,
All residing at Seth Narayan Park,
Room No.A/3101, Belpada, Road,
Sector-3, Opp- Kharghar Railway Station,
New Mumbai

... Applicants

Versus

1. State of Maharashtra
At the instance of Sr. Inspector of Police,
Pantnagar Police Station vide their C.R.
No. 74 of 2019.

2. Mrs. Rajeshwari Rahul Kale,
Aged 35 years, Occ : Nil,
Residing at : B/3/12, Shriram Building,
Dexata CHS, E.E. Highway, Ramabai
Ambedkar Nagar, Ghatkopar (E),
Mumbai 400 075.

....Respondents

Mr.Rahul Arote for applicants.
Mrs. S.D. Shinde, APP for respondent No.1-State.
Mr. Prajyot Shrivastav for respondent No.2.
Respondent No.2 present and interacted with the Court.

**CORAM : S. S. SHINDE &
N.J. JAMADAR, JJ.
DATE : 24th AUGUST 2021.**

JUDGMENT (PER N.J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith and, with the consent

of the learned counsels for the parties, heard finally.

2. This application under section 482 of the Code of Criminal Procedure, 1973 ('the Code') is preferred to quash and set aside the F.I.R. No. 74 of 2019, registered with Pant Nagar Police Station for the offences punishable under sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860 ('the Penal Code') at the instance of respondent No.2-Mrs. Rajeshwari Rahul Kale, the first informant, on the basis of settlement arrived at between the parties.

3. The marriage of applicant No.1 and respondent no.2 was solemnized on 27th April 2015. Applicant Nos. 2 and 3 are the parents of applicant No.1. In the wake of the marital discord, the applicant and respondent No.2 have been residing separately since 17th May 2018. Respondent No.2 lodged a report against the applicants with the allegations of subjecting her to cruelty in order to coerce her to meet an unlawful demand of property and relieving her of 'Stridhan', leading to registration of C.R. No. 74 of 2019.

4. Mr. Arote, the learned counsel for the applicants, and Mr. Shrivastav, the learned counsel for respondent No.2 make a joint statement that, in the intervening period, the matrimonial dispute between the applicant No.1 and respondent No.2 has been

amicably resolved. A petition for divorce by mutual consent under section 13(B) of Hindu Marriage Act, 1955 is filed before the Family Court, Bandra, Mumbai and consent terms have been filed therein. In this application also, respondent No.2 has tendered affidavits.

5. Respondent No.2 appeared before the Court. Upon interaction, respondent No.2 informed the Court that she has decided to settle the dispute with the applicants voluntarily. In accordance with the terms of settlement, she and applicant No.1 have filed a petition for divorce by mutual consent. In the said petition, consent terms have been arrived at and pursuant thereto, the applicant No.1 has agreed to pay a sum of Rs.8,00,000/- (Rupees Eight lakh only) towards permanent alimony, out of which she has already received a sum of Rs.6,00,000/-.

6. Paragraph Nos.2 to 5 of the affidavit sworn on 20th July 2021 read as under :

"2 I say that the Complaint subject matter of the aforesaid crime was result of differences and disputes between myself, my family Members on one side and Applicant and his family members on other, out of matrimonial discords.

3 I say and submit that myself and the Applicant have cleared all our disputes and differences and settled it amicably. I say that we have also filed Petition for divorce by Mutual Consent before Hon'ble Family Court, at Bandra, bearing Petition No. F-1133 of 2021. I further say that Applicant have agreed to pay sum of Rs.8,00,000/- as permanent alimony and out of which I have received Rs.6,00,000/-.

4 *I say that I am filing the present Affidavit at my own free will and with complete consent of my parents and other family members. I say that no one including the Applicant abovenamed have influenced me by any pressure, threat, duress and/or conspiracy so as to compel me to file the present Affidavit.*

5 *I respectfully submit that my no objection to quash the C.R. No.74 of 2019 registered with the Pant Nagar Police Station as we have settled the dispute amicably and now we wish to live peaceful life."*

7. As the FIR indicated that certain ornaments and articles, which were allegedly entrusted to the applicants, were misappropriated, the respondent No.2 has sworn an additional affidavit. She claimed to have received all ornaments, except item at Sr.No.6, i.e. one gold chain and ring, which were meant for the applicant No.1 and she had decided to forego the claim over the same. The relevant part of paragraph No.3 of the additional affidavit reads as under :

"3.....I say that during course of settlement, I have received all above-mentioned ornaments except item at Sr.No.6 i.e., gold chain and ring (as it was meant for applicant No.1 and I have not claimed the same as it was for Applicant No.1), utensils and other household items from applicants and thereafter we have filed Petition for divorce by mutual consent in the Hon'ble Family Court at Bandra."

8. Evidently, the matrimonial dispute between the parties was the genesis of the alleged offences. Eventually, with the intervention of elders and well-wishers, the applicants and respondent No.2 have amicably resolved the dispute. The have

decided to bury the hatchet. Applicant No.1 and respondent No.2 have agreed to part ways. Pursuant thereto, they have filed the petition for divorce by mutual consent before the Family Court and the terms of settlement have been arrived at. It seems that the dispute has been settled in its entirety. Continuation of the prosecution, in such circumstances, would serve no fruitful purpose. Respondent No.2 would not support the prosecution earnestly. The possibility of the prosecution ending in the conviction is extremely remote and bleak. Continuation of prosecution, on the contrary, would cause a great prejudice to not only the applicants but the respondent No.2 as well.

9. A useful 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

1 2012 (10) SCC 303

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. Applying the ratio in the aforesaid judgment to facts of the case, in our view, the ends of justice would be secured and the abuse of the process of the Court can be prevented by quashing the FIR, in question.

11. Hence the following order:

: ORDER :

- (i) The petition stands allowed.
- (ii) FIR No. 74/2019 arising out of the offences punishable under sections 498A, 406, 323 and 504 read with 34 of the Penal Code and all the consent proceedings stand quashed and set aside.

Rule made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]