

JPP

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

CRIMINAL APPLICATION NO. 65 OF 2021

Vipul Mahendra Lodha and Anr.

... Applicants

V/s.

Ms. Vicky Vipul Lodha
Nee Ms. Vicky Fatehlal Choudhary
and Anr.

... Respondents

Mr. Dashrath Parab for the Applicants
Mr. Vaibhav Bagade for the Respondent No.1
Ms. M.H. Mhatre, APP for the Respondent – State

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 25 NOVEMBER 2021

P.C. :-

Heard the learned Counsel for the parties.

2. The Applicants have sought to quash the FIR/CR No.598/2019, registered with Kandivali Police Station, Mumbai bearing FIR/Cr.No.598 of 2019, U/s. 498A, 323, 34 of IPC, by the Respondent No.1 Mrs. Vicky Vipul Lodha Nee Vicky Fatehlal Choudhary against the Applicants as well as if charge sheet filed in the said FIR.

3. The learned Counsel for the Applicants and the learned Counsel for the Respondent No.1 state that the parties i.e. the Applicant No.1 and the Respondent No.1 have resolved their dispute and have filed Consent Petition for Mutual Divorce in the Family Court, Bandra and the present FIR be quashed. The learned Counsel for the parties relied upon the decision of the Supreme Court in the case of *Gian Singh v/s. State of Punjab and Another*¹.

4. The Respondent No.1 filed an FIR on 8 November 2019 contending that she was subjected to physical and mental cruelty and also demands for dowry. The Applicant No.1 has filed a Petition for divorce bearing No. 753 of 2020 in the Family Court, Bandra, Mumbai.

5. The learned Counsel for the parties have drawn our attention to the consent terms filed on 13 March 2020 in the Family Court which are annexed to the Petition wherein the parties have mutually agreed to part ways. There is a reference to the present FIR and consent of the Respondent No.1 for quashing the same. The Respondent No.1 has filed an affidavit sworn on 18 February 2021 wherein the contents of the consent terms are reiterated so also the consent of the Respondent No.1 for quashing the FIR. The affidavit refers to the schedule of payments agreed between the parties. It is also stated that decree of divorce will be passed after quashing of the

¹ (2012) 10 SCC 303

criminal proceedings. The learned Counsel for the Respondent No.1 reiterates the contents of the affidavit and states that the Respondent No.1 has sworn the affidavit without any coercion.

6. Considering the facts which are narrated above, it is clear that if the FIR is not quashed, the decree of divorce with mutual consent would not take place and keeping the prosecution pending will impede the amicable resolution of the dispute. The Apex Court in the case of *Gian Singh* has observed thus :-

“ The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. 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. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have

serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on 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 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 answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

(emphasis supplied)

7. The fact situation narrated above falls within the parameters of the category of cases referred to in the above passage from the decision of *Gian Singh*. Nothing adverse is pointed out to us as to why this law should not be applicable to the facts of this case. In the light thereof, the Application is allowed in terms of prayer Clause (a), which reads thus :-

“This Hon’ble Court may be pleased to quash the FIR/ CR No.598/2019, registered with Kandivali Police Station, Mumbai bearing FIR/Cr.No.598 of 2019, U/s. 498A, 323, 34 of IPC, by the Respondent No.1 Mrs. Vicky Vipul Lodha Nee Vicky Fatehlal Choudhary against the Applicants as well as if charge sheet filed in the said FIR.”

8. Order accordingly.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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PAWAR
Date: 2021.11.30
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