

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.222 OF 2021

Vishwas Vishwanath Acharekar]
Age – 33 years, Occ : Business]
Residing at Lodha Palava, Kasa Rio Victoria]
D, 7/705, Kalyan- Shil Road]
In front of Nilange Station]
Dombivli (East) – 421204.]..... Petitioner.

Versus

1] State of Maharashtra]
Through Colaba Police Station,]
Mumbai.]
2] Ms. Rajani Laxman Bhambore]
Age : 29 years, occ : Student]
Residing at 14/16, Rajubai Building]
3rd Floor, Ganesh Lane, Colabawadi]
Colaba, Mumbai 400 005]..... Respondents.

Mr. Karan Singh Rajput for the Petitioner.
Smt. A S Pai, APP for the Respondent No.1/State.
Mr. Amit Nalavade for Respondent No.2.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 15th March 2021
Pronounced on : 18th March 2021

JUDGMENT :- (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard with the consent
of the learned counsel for the parties.

2 By this Writ Petition the Petitioner seeks the following substantial
relief :-

“(a) That this Hon’ble Court may be pleased to invoke its writ jurisdiction under Article 226 of the Constitution of India and inherent jurisdiction under Section 482 Cr.PC thereby quash and set aside the FIR bearing No.35 of 2018 registered with Colaba Police Station on 29th March 2018 for offences punishable under Section 354(D), 504, 506 509 of IPC along with charge-sheet filed before the Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai.”

3 The Petitioner herein is arraigned as an accused in the FIR bearing No.35 of 2018 registered with Colaba Police Station on 29th March 2018 for the offences punishable under Section 354(D), 504, 506 509 of the Indian Penal Code at the instant of Respondent No.2 herein. The investigation in the said FIR was progressed and the charge sheet came to be filed against the Petitioner. It is the case of the Petitioner that in the year 2015 the 2nd Respondent had created her profile on the Shadi.com website for suitable marriage proposal for herself. On 14th January 2018, the 2nd Respondent i.e. the first informant received a whatsapp message from the Petitioner. Thereafter the Petitioner and the 2nd Respondent exchanged messages and expressed their interest in each other and decided to meet at the residence of the Petitioner. Accordingly the 2nd Respondent met with the Petitioner at his residence, however, in the said meeting, the 2nd Respondent did not like the Petitioner and therefore left his house. Thereafter the Petitioner repeatedly tried to contact the 2nd Respondent but she did not respond, therefore he

informed her that he would be visiting her residence. Therefore the 2nd Respondent asked him to meet at Gateway of India. It is in the said meeting the Petitioner alleged to have informed the 2nd Respondent that he is in love with her and if she did not accede to marry her he would commit suicide. It is alleged that the 2nd Respondent tried to convince him. Thereafter she intimated him that she wanted to pursue her education and has no intention to marry. They continued to meet on several occasions. But on account of denial on the part of Respondent No.2 to marry the Petitioner, the Petitioner attempted to commit suicide by consuming phenyl. It is the case of the Petitioner that there were exchange of words between them. It is alleged in the said FIR that after the 2nd Respondent refused to marry the Petitioner, the threats were given by the Petitioner to the 2nd Respondent. According to the Petitioner, this is a ground for registration of the present FIR.

4 It is submitted by the learned counsel appearing for the Petitioner that the said FIR is an exaggerated version of the actual happenings of events. The investigation has substantially progressed and the charge sheet also came to be filed against the Petitioner. It is submitted that the Petitioner was in love and got emotionally involved with the 2nd Respondent and, thereafter the Petitioner and the 2nd Respondent exchanged messages and expressed their interest in each other. However, all of a sudden the 2nd Respondent conveyed her decision not to marry the Petitioner and therefore the Petitioner decided to

commit suicide due to the rejection of the proposal of the Petitioner by the 2nd Respondent. The Petitioner was merely tried to convince the 2nd Respondent and during the said process there were exchange of words, and the Petitioner has no intention to give threats to the 2nd Respondent. It is further submitted by the learned counsel for the Petitioner that in such circumstances the conduct of the Petitioner was reasonable and justified, and therefore, the Petitioner did not commit the offence of stalking which is punishable under Section 354D of the Indian Penal Code.

5 The learned counsel appearing for the Petitioner submits that, without entering upon the merits of the case, this Court may allow this Petition on the basis of the settlement arrived at between the Petitioner and the 2nd Respondent. The learned counsel has tendered across the Bar the undertaking on affidavit of the Petitioner. Same is taken on record and marked as “X” for identification.

6 The learned counsel appearing for the 2nd Respondent submitted that after registration of the impugned FIR, the 2nd Respondent has got married and leading a peaceful life with her husband. The Petitioner and the 2nd Respondent have not met each other at any time after registration of FIR. The 2nd Respondent is totally engrossed in her marital life, and therefore, she is willing to give her consent for quashment of the said FIR as well as the charge-

sheet.

7 With the able assistance of the learned counsel appearing for both the parties, we have perused pleadings and the grounds taken in the Petition as also the recitals of the impugned FIR.

8 The 2nd Respondent was present before this Court on 18/02/2021 when the matter was heard. She was identified by her advocate. Her advocate handed over across the bar her affidavit. When we interacted with her, she stated that she has filed her affidavit on her own will, without any coercion or pressure. It is stated therein that she has no objection to the prayer of the Petitioner being granted. In paragraphs 1 to 5 of the affidavit of consent, the 2nd Respondent has stated thus :-

“1 I am the First Informant in the FIR bearing No.35 of 2018 registered with Colaba Police Station on 29th March 2018 for offences punishable under Sections 354D, 504, 506, 509 of IPC (hereinafter referred to as the “said FIR”). The charge-sheet has also be filed in connection with the said FIR.

2 I state that the sequence of events pertain to the month of January-February 2018 when I was searching for a suitable groom and came across the Petitioner through an online portal called ‘Shadi.com’. The Petitioner

behaved in an unusual and unruly manner with me, during the said period, which antagonized me and my family. It is in pursuance of the same, I had approached the Colaba Police Station and got the said FIR registered.

- 3 I further state that subsequent to the registration of the said FIR, I have got married and presently peacefully leading my life with my husband. I do not wish to continue with the criminal prosecution originated from the said FIR and desires to get it quashed with my consent.
- 4 I and the Petitioner have not met each other any time after the registration of the said FIR and I am totally engrossed in my marital life which aspect precipitates my willingness to offer my consent for the quashment of the said FIR as well as the Chargesheet.
- 5 I have no objection if the FIR in question along with its charge-sheet is quashed by this Hon'ble Court on account of my express consent to do the same. Thus, without getting into the questions of fact pleaded in the aforementioned Writ Petition, I beseech this Hon'ble Court to be kind enough to terminate the entire proceedings emanated through the said FIR."

9 The 2nd Respondent has also filed her additional affidavit of consent wherein she has stated that she has lodged the impugned FIR with the Colaba Police Station for the offences punishable under Sections 354D, 504,

506 and 509 of the Indian Penal Code, and the charge sheet has also been filed in connection with the said FIR. In addition to what has been stated by her in the earlier affidavit dated 12/02/2021, the 2nd Respondent in paragraph No.3 of her additional affidavit of consent dated 3rd March 2021 has stated that the misunderstanding between them is cleared off now on account of which she expresses her unequivocal consent to quash the present FIR . She further stated therein that she has no objection if the FIR in question along with its charge-sheet is quashed by this Hon'ble Court by dint of her express consent to do the same.

10 Looking to the nature of allegations made against the Petitioner in the impugned FIR, this Court by order dated 18/02/2021 directed the Petitioner to place on record his undertaking on affidavit that he shall delete the messages sent to respondent No.2 on WhatsApp and other social media platforms forthwith, and that he shall not contact respondent No. 2 in future. As stated herein above, accordingly the Petitioner has filed his affidavit of undertaking dated 24/02/2021 before this Court. In paragraphs 1 to 3 of his affidavit in undertaking, the Petitioner undertakes as under :-

“1 I am arraigned as an Accused in an FIR bearing No.35 of 2018 registered with Colaba Police Station on 29th March 2018 for offences punishable under Sections 354D, 504, 506, 509 of IPC (hereinafter referred to as the “sai FIR”).

The charge-sheet has also been filed in connection with the said FIR.

- 2 I had preferred the present Criminal Writ Petition seeking to quash the said FIR and the consequential charge-sheet. It is during the pendency of the present Peition, the Respondent No.2 had filed her Affidavit of Consent before this Hon'ble Courtr to further the cause of quashing the criminal proceedings by mutual consent.
- 3 It is in these circumstances, I undertake to delete all the messages sent to and received from the Respondent No.2 on whatsapp and/or other social media platforms. I also undertake not to contact the Respondent No.2 anytime in the future for any reason whatsoever. I shall not establish any connection with the Respondent No.2 or her husband so as to cause disturbance in their peaceful matrimonial life.”

11 The learned counsel appearing for both the parties submit that both the parties have voluntarily agreed to settle the dispute and there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that both the parties have amicably resolved/settled the dispute and decided to seek quashing of impugned FIR by this Writ Petition. The 2nd Respondent has also filed the affidavit of consent as also the additional affidavit of consent in support of the said settlement. By filing undertaking, the Petitioner also undertakes to delete the messages sent to and received from

the 2nd Respondent on whatsapp and/or other social media platforms. He also undertakes not to contact the Respondent No.2 anytime in the future for any reason whatsoever.

12 The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that, the criminal cases having overwhelmingly and predominately 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.

1 2012 (10) SCC 303

13 In view of settlement arrived at between the parties, no fruitful purpose will be served by continuing the further investigation in the FIR bearing No.35 of 2018 registered with Colaba Police Station on 29th March 2018 by the 2nd Respondent against the Petitioner for the offences punishable under Section 354(D), 504, 506 and 509 of IPC and the further proceedings in the charge-sheet filed before the Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai.”

14 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Petitioner in the impugned FIR. The further continuation of proceedings pending before the concerned Court would tantamount to abuse of the process of the Court, since the 2nd Respondent by way of filing her affidavit of consent and additional affidavit of consent has clearly stated that, she is not interested to pursue the allegations made in the impugned FIR and would not participate in the pending proceedings before the concerned Court and the chances of conviction of the Petitioner would be bleak and remote. Importantly, the 2nd Respondent is married and leading her peaceful married life and does not want disturbance in her future life.

15 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the

Writ Petition deserves to be allowed and accordingly the same is allowed in terms of prayer clause (a). Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]