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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.519 OF 2020

1. **Vedprakash Rameshwar Sharma**]
R/o Bhardwaj Sadan, Adarsh Colony,]
Khetri Road, Nr.Suraj Garh Modh,]
Chirawa, Dist.Jhunjhunu, Rajasthan]
]
2. **Rameshwar Datta Sharma**]
R/o Bhardwaj Sadan, Adarsh Colony,]
Khetri Road, Nr.Suraj Garh Modh,]
Chirawa, Dist.Jhunjhunu, Rajasthan]
]
3. **Shaktiprasad Rameshwar Datta Sharma**]
R/o Bhardwaj Sadan, Adarsh Colony,]
Khetri Road, Nr.Suraj Garh Modh,]
Chirawa, Dist.Jhunjhunu, Rajasthan]
]
4. **Pushpa Shaktiprasad Datta Sharma**]
R/o Bhardwaj Sadan, Adarsh Colony,]
Khetri Road, Nr.Suraj Garh Modh,]
Chirawa, Dist.Jhunjhunu, Rajasthan] .. Applicants

VERSUS

1. **The State of Maharashtra**]
(Through, Sr.Inspector of Police,]
Parksite Police Station, Vikhroli,]
Mumbai]
]
2. **Smt.Nirmala Vedprakash Sharma**]
R/o c/o Shri Kuldeep Purshottamlal]
Sharma, Building No.D/5, Room]
No.153, Century Rayon Colony,]
Nr.Century School, Shahad, Ulhasnagar,]
Thane.] .. Respondents

Dr.Samarth S. Karmarkar with Ms.Sumitra Jadhav
and Ms.Kalyani Virkar i/b Karmarkar & Associates
for the Applicants.

Mr.Amritpal Singh Khalsa with Ms.Pooja Chabria
for Respondent No.2.

Respondent No.2 present in Court.

Mrs.M.H.Mhatre, APP for the Respondent/State.

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

DATED : 18th FEBRUARY, 2021

ORAL JUDGMENT (PER MANISH PITALE, J.)

1. By this application, the applicants have approached this Court seeking quashing of Criminal Case No.70/PW/2017 pending before the Additional Chief Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai in connection with FIR No.165 of 2018 registered at Parksite Police Station, Mumbai.

2. Since the complaint leading to registration of FIR lodged at the behest of respondent No.2 being a matrimonial discord, the parties later on, settled the *inter se* dispute and arrived at consent terms dated 4th February, 2020 and the same was filed before the Sessions Court at Kalyan. As per the consent terms, respondent No.2 agreed to co-operate with the applicants for quashing of the said FIR and charge-sheet, subject to the terms of compromise being satisfied.

3. It is pointed out by the learned counsel appearing for the applicants that initially there were eight accused in the present case, but, accused Nos.5 to 8 were discharged by an order of the

Magistrate and, therefore, only accused Nos.1 to 4 are the applicants before this Court.

4. Respondent No.2 has appeared through counsel before this Court. Affidavit of respondent No.2 is tendered across the bar, wherein the consent terms have been reiterated and it is stated that since the dispute has been amicably settled between the parties, respondent No.2 has no objection to the prayers made in this application being granted.

5. The relevant paragraphs of the said affidavit read as follows :

“3. That, ultimately, the matrimonial discord between me and the Applicant No.1 is settled and upon the amicable settlement being carried out between the parties, Consent Terms came to be filed before Hon’ble Sessions Court at Kalyan on 04/02/2020.

4. That, no fruitful purpose would be served out if the prosecution against the Applicants is continued but on the contrary if the prosecution against the Applicant is continued, the life of the both the parties will become miserable and the future will be at stake, as if it is, both the parties have mutually decided and undertake to lead the further life harmoniously and peacefully.

5. That, taking into consideration the future of both the parties, we have resolved the dispute amicably.

6. That, I have no objection, if the said Application is allowed and the case presently pending before the Ld. Addl. Metropolitan Magistrate’s 31st Court at Vikhroli, Mumbai, bearing CC No.70/PW/2017 bearing C.R.No.165 of 2016 on 14/05/2016 for the offences u/sec.498-A, 406, 323, 34 of I.P.C., lodged with Parksite Police Station as against the Applicants herein is quashed/set aside.

7. That, I will withdraw this Affidavit with permission of the Hon'ble Court if the Applicant No.1 fails to fulfill any term or/and condition of the Consent Terms filed before Hon'ble Sessions Court at Kalyan on 04/02/2020.

8. That I will proceed further with legal proceedings against Applicant No.1 in case of breach of terms and/or conditions of the Consent Terms filed before Hon'ble Sessions Court at Kalyan on 04/02/2020.

9. That, I am deposing this Affidavit without any force, fraud or coercion at the hands of the Applicants or any person on their behalf and I am deposing it with my free will."

6. 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

1 2012 (10) SCC 303

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.

7. We have perused the consent terms as also the affidavit tendered across the bar on behalf of respondent No.2. It is apparent from the consent terms that the schedule of payment of the agreed amount is also mentioned and that the applicants intend to abide by the said schedule. In view of the fact that the dispute between the parties is essentially a family dispute and arose out of the matrimonial discord and the fact that now the dispute has been amicably settled between the parties and respondent No.2 has no objection to the FIR and the charge-sheet being quashed, we are of the opinion that this is a fit case for applying the ratio laid down in *Gian Singh* (supra).

8. In view of the settlement made on behalf of respondent No.2, it is evident that she will not be supporting the allegations made in the FIR and that there is little chance of the applicants being found guilty, we are of the opinion that the present application deserves to be allowed.

9. Accordingly, the application is allowed in terms of prayer clause (a), which reads as under :-

(a) That this Hon'ble Court be pleased to be quash and set aside CC.No.70/PW/2017 pending before the Additional Chief Metropolitan Magistrate's 31st Court at Vikhroli, Mumbai, in connection to FIR vide C.R.No.165 of 2016 pending against the Applicants herein registered with Parksite Police Station, Mumbai."

10. The parties are directed to abide by the consent terms placed on record. Further, the parties are directed to appear before the Family Court to give effect to the consent terms on such dates as may be fixed by the Court, unless there are compelling reasons for which, they may seek permission from the Family Court for exemption.

11. The Criminal Application stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)