

Abhishek Rajesh Godambe and Others ...Petitioners
vs.
The State of Maharashtra and Another ...Respondents

Mr. Amey Deshpande, for the Petitioners.
Mr. J.P. Yagnik, APP for the Respondent-State.
Mrs. Aarti Godambe, the Respondent No. 2 present.

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CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.

DATE : SEPTEMBER 02, 2021

JUDGMENT : (Per N.J.Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 (the Code) is preferred to quash and set aside the first information report No. 49 of 2019 registered at Kasarwadavali police station, Thane for the offences punishable under sections 406, 498A read with 34 of Indian Penal Code, 1860 at the instance of respondent No. 2 – first informant.

3. The marriage of the petitioner No. 1 was solemnized with respondent No. 2 on 3rd June, 2017. The petitioner Nos. 2 to 4 are

the relatives of petitioner No. 1. The marriage was afflicted with discord. As the dispute escalated, the respondent No. 2 lodged report against the petitioners at Kasarwadvali police station for allegedly subjecting her to cruelty in order to coerce her to meet an unlawful demand of property and also for criminal breach of trust leading to C.R. No. 49 of 2019, for the aforesaid offences.

4. Mr. Amey Deshpande, the learned counsel for the petitioners and Mrs. Aarti Godambe, the respondent No. 2 who is present in person, make a joint statement that in the intervening period the dispute between the petitioners and respondent NO. 2 has been amicably resolved. The respondent No. 2 does not wish to prosecute the petitioners any further. The respondent No. 2 has thus filed an affidavit incorporating her consent to quash the above numbered first information report and the consequent proceeding arising out of the said first information report.

5. We have interacted with the petitioner No. 1 and respondent No. 2, who are present in the Court. The respondent No. 2 is an advocate by profession. She informed the Court that she has decided to settle the dispute with the petitioners out of her own volition and there is no coercion or duress. The petitioner No. 1 and respondent No. 2 have decided to settle all the matrimonial

disputes and a marriage petition, being M.P.No. 25 of 2019, is filed before the learned Civil Judge, Maval, Pune wherein they have decided to obtain divorce by mutual consent in accordance with the consent terms executed before the Civil Court. A copy of which is annexed to the petition (Exhibit B).

6. Paragraph Nos. 1 to 7 of the affidavit of respondent No. 2 read as under:

1/ At the outset, I state and submit that I have received the copy of the Writ for quashing of F.I.R. filed by the petitioners herein and being aware of the facts and circumstances of the case, am filing my consent affidavit for quashing of the F.I.R as myself and the petitioner No. 1 have mutually decided to dissolve our marriage by filing mutual consent.

2/ I say that, out of matrimonial dispute, the petitioner No. 1 have filed M.P. No. 25 of 2019 before the Hon'ble Civil Judge (S.D.), Maval, Pune.

3/ I say that out of my matrimonial disputes, I have lodged C.R.No.49 of 2019 punishable under section 498(a), 406 read with 34 of IPC against the petitioners with Kasarwadavli police station, Thane.

4/ I further state that as the above said offence is registered out of matrimonial disputes, hence elder family members of both the petitioner No. 1 and myself have settled the disputes between me and the petitioners amicably. Accordingly, now the dispute between me and the petitioners are amicably settled out of Court. Therefore, on 6th August, 2021 myself and petitioner No. 1 have also filed consent terms before the Hon'ble Court of Civil Judge (S.D) Maval, Pune in M.P. No. 25 of 2019. A true copy of the said consent terms is annexed by the petitioner as Exh.B in the said Writ Petition.

5/ I further state that, as agreed under the consent terms, I have already received a sum of Rs. 10,00,000/- by demand draft from petitioner No. 1 at the time of filing the above said consent terms.

6] I further submits that today also as agreed under the consent terms, I have already received a sum of Rs. 15,00,000/- by demand draft from petitioner No. 1 at the time of filing the present affidavit before this Court.

7] I further state that as agreed under the said consent terms, I am now withdrawing all the allegations made against the petitioners in C.R.No. 49 of 2019 punishable under section 498(a), 406 read with 34 of IPC registered with Kasarwadavali police station. Hence, I am hereby expressing my free and willful consent before this Court that the petition filed by the petitioner be allowed and the C.R. No. 49 of 2019 punishable under section 498(a), 406 read with 34 of IPC registered with Kasarwadavali police station be quashed and set aside.

7. Evidently, the matrimonial dispute between the petitioner No. 1 and respondent No. 2 is the genesis of the alleged offences. Petitioner No. 1 and respondent No. 2, both of whom are advocates by profession, have amicably resolved the dispute. It seems that they have decided to part ways and move on in life. Respondent No. 2 further submitted that, in accordance with the terms of the settlement, she has received a sum of Rs. 25 lakhs. She is agreeable to receive the balance amount of Rs. 80 lakhs on the date the decree for dissolution of marriage by mutual consent is passed by the Civil Court.

8. In the light of the comprehensive settlement between the parties, it is very unlikely that respondent No. 2 would support the prosecution case. And the chances of the prosecution ending in conviction are extremely remote and bleak. Continuation of

prosecution, where the parties have arrived at settlement of the entire dispute, would serve no fruitful purpose. On the contrary, it would put the parties, including respondent No. 2, to grave prejudice. It would thus amount to abuse of the process of the Court.

9. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of *Glan Singh vs. State of Punjab*¹, wherein a Three Judge Bench of the Supreme Court, considered the relative scope of the provisions contained in Section 482 and Section 320 of the Code and expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

“61. But 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, High Court may quash 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 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

1 (2012) 10 Supreme Court Cases 303.

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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

10. Aforesaid pronouncement in the case of **Gian Singh** (supra) applies with full force to the facts of the case at hand. The offence arose out of matrimonial dispute and the entire dispute is proposed to be settled by the parties. Thus, in order to secure the ends of justice and prevent the abuse of the process of the Court, we are inclined to allow the petition.

11. Mr. Deshpande, learned counsel for the petitioner submitted that though the parties have agreed that the balance amount of Rs. 80 lakhs is to be paid to respondent No. 2 on the date of the order to be passed in the Marriage Petition, yet, the petitioner No. 1 is ready to deposit the said amount before the Civil Court. Mr. Deshpande, further submitted that the Marriage Petition is posted for final orders before the Civil Court tomorrow.

12. We record the statement made on behalf of the petitioners. In the event the final order is not passed in the said Marriage Petition

tomorrow, the petitioners shall deposit the balance amount in the Civil Court.

Hence, the following order.

ORDER

- a] The petition stands allowed.
- b] The F.I.R No. 49 of 2019 registered with Kasarwadavali police station, Thane and all the consequent proceedings arising out of the said F.I.R, stand quashed and set aside.
- c] The learned Civil Judge is requested to expeditiously decide the Marriage Petition No. 25 of 2019.
- d] The petitioner No. 1 and respondent No. 2 shall render necessary cooperation to the learned Civil Judge in expeditiously deciding the said Marriage Petition.
- e] In the event the said Marriage Petition is not decided tomorrow, the petitioner No. 1 shall deposit the balance amount of Rs. 80 lakhs, in accordance with the consent terms, before the Civil Court.
- f] Rule made absolute in aforesaid terms.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)