

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.85 OF 2021

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| 1. Mohammad Ravanbakhsh Jafari] | |
| 2. Leila Mohammad Jafari] | |
| 3. Zahara Mohammad Jafari] | |
| all Petitioner Nos.1, 2 and 3] | |
| having current address at G52,] | |
| Second Floor, Lajpat Nagar, New] | |
| Delhi and Permanent Address at,] | |
| House No.12, Zainulabeddin] | |
| Road, Tehran, Iran.] | ... Petitioners |

Versus

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| 1. The State of Maharashtra] | |
| (At the instance of Navghar] | |
| Police Station.)] | |
| 2. Prakash Arjun Lohar] | |
| having address at Neel Telecom] | |
| Mobile Shop, Room No.01, First] | |
| Floor, Morya Niwas, Kisannagar] | |
| No.2, Wagale Estate, Thane] | |
| (West), Thane.] | Respondents |

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Mr. A. Karim Pathan for the petitioner.

Mrs. S.D. Shinde, A.P.P. for respondent-State.

Ms. Megha Goyalani for respondent No.2.

Respondent No.2 is present in the court.

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

DATED : 10TH FEBRUARY, 2021.

ORAL JUDGMENT:- [S.S. Shinde, J.]

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.
2. This writ petition is filed for the following substantive relief:

“(b) Thi Hon’ble Court may kindly quash / de-register the criminal proceedings vide C.C. No.743/PW/2018 in C.R. No.194 of 2018 registered at Navghar Police Station, Mulund pending before the Id. Metropolitan Magistrate’s 27th Court, at Mulund for offences punishable u/s. 380 of IPC.”

3. Learned counsel appearing for the petitioners and respondent No.2 jointly submit that the petitioners and respondent No.2 have amicably settled the dispute and, therefore, the impugned FIR and pending proceedings, may be quashed. Learned counsel for respondent No.2 has submitted an affidavit in reply. The same is taken on record. Paragraph Nos.2 to 8 of the said Affidavit read as follows:

“2. I say that the Petitioners through their relative have approached me and explained their difficulty that due to outbreak of COVID 19 and lockdown, they are unable to visit their country Iran. Their passports are lying with the concerned police station. Therefore, they have shown willingness to amicably settle and end the litigation.

3. I say that therefore on humanitarian ground I also shown my willingness to give NO Objection for amicable settlement and quashing of the case.

4. I say that I do not wish to proceed in the matter and wish to compound the same since the differences and disputes between us have been amicably resolved.

5. I say that I have no grievance or any grudge or any ill feelings towards Petitioners and further I am making this affidavit in reply without any pressure, force, coercion or undue influence from anyone.

6. I say that I have no objection if the case bearing C.C. No.743/PW/2018 pending before the Id. Metropolitan Magistrate's 27th court, Mulund (FIR vide C.R. No.194 o 2018 registered at Navghar Police Station) for offences under section 380 r/w 34 of IPC, is quashed and treated as closed and I also agree to cooperate with Petitioners before the Courts of law for getting matter quashed or compounded.

7. I say that I have received my stolen mobile phone, therefore I have no grievance against the Petitioners and hence seeking permission to compound the present case.

8. I say that I have no claims of any nature against Petitioners and further more out of my own free will I am preparing this reply. I have been read and explained the contents hereinbefore in Hindi language and the same are true and correct as per my knowledge.”

4. Respondent No.2 is present in the court. He is identified by his lawyer. We have interacted with him. He states that it is his voluntary act to enter into the settlement and file the affidavit. He has stated that in view of the settlement, he has no objection for quashing the FIR and the pending proceedings.

5. Upon hearing the learned counsel appearing for the parties and, in view of the fact that respondent No.2 has voluntarily, without any pressure or coercion, entered into a settlement and further he does not wish to prosecute the pending proceedings, we are of the opinion that no fruitful purpose would be served by continuing the pending proceedings viz. C.C. No.743/PW/2018 in C.R. No.194 of 2018 registered at Navghar Police Station, Mulund, pending before Metropolitan Magistrate's 27th Court, at Mulund.

6. The Supreme Court in the case of *Gian Singh v. State of Punjab & Anr.*¹ has held that the criminal cases having overwhelmingly and predominately civil flavour stand on a

¹ (2012) 10 SCC 303

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 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. Since the petitioners and respondent No.2 have amicably settled the dispute and respondent No.2 has filed an affidavit to that effect, it is crystal clear that respondent No.2 is not going to appear before the trial court in the pending proceedings and the chance of conviction of the petitioners is bleak and remote and, therefore, the continuation of further proceedings arising out of the said case would be an exercise in futility and would

tantamount to abuse of process of the court.

8. In the light of the discussions in the foregoing paragraphs and in order to secure the ends of justice and to prevent the abuse of the process of the court, we are inclined to allow this petition. Accordingly, the petition is allowed in terms of prayer clause (a) of the petition, which is reproduced in paragraph No.2 above.

9. Rule made absolute in the above terms. The petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)