

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3169 OF 2019

1]	Mr. Salman Badgujar	]
	Aged 25 years, Occ Nil.	]
		]
2]	Mr. Shahrukh Badgujar	]
	Aged 23 years, Occ Nil.	]
		]
3]	Mr. Salim Badgujar	]
	Aged 40 years, Occ Nil.	]
		]
4]	Mr. Ezaz Badgujar	]
	Aged 42 years, Occ Nil.	]
		]
	All Adult, Indian Inhabitant	]
	Residing at Flat No.402/B-Wing,	]
	Sugara Park, Pathanwadi,	]
	Malad (East), Mumbai – 400 097	]..... Petitioners.

Versus

1]	The State of Maharashtra	]
	Through Office Commissioner of Police	]
	Crawford Market, Mumbai	]
		]
2]	The Senior Inspector of Police	]
	Kurar Police Station	]
	Malad (East), Mumbai	]
		]
3]	Mr. Arif Anwar Bhati	]
	Age 39 years	]
	Residing at Room No.9	]
	Plot No.89/A, T.P.S. - III,	]
	33 rd Road, Khar (W), Mumbai 400 052	]..... Respondents.

Mr. Shadab Khopekar i/by Mr. Akhtar Ali Shaikh for the Petitioners.
Mr. K V Saste, APP for Respondent Nos.1 & 2/ State.
Ms. P C Pandey for Respondent No.3.
The Petitioners and Respondent No.3 are present in Court.

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

DATE : 24th September 2021

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

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

2 The Petitioners by this Petition take exception to C. R. No.459 of 2018 registered with Kurar Police Station for the offences punishable under Sections 326, 141, 143, 144, 147, 149, 324, 34 of the Indian penal Code.

3 The learned counsel appearing for the Petitioners and the Respondent No.3 jointly submit that the parties have amicably settled the dispute. The 3rd Respondent is the brother in law of the Petitioner Nos.1 and 2 herein, and, the Petitioner Nos.3 and 4 are the uncles of Petitioner Nos.1 and 2.

4 Pursuant to the notice issued to the 3rd Respondent, he has filed his affidavit. Today the 3rd Respondent is present before Court. He is identified by his advocate. We have interacted with the 3rd Respondent. He stated that it is his voluntary act without any coercion to enter into such amicable settlement and join the prayer of the Petitioners for quashing the impugned FIR. He further stated that he was indoor patient only for two days. He also stated that, he and his wife, who is the sister of Petitioner Nos.1 and 2, are staying

together peacefully. He further stated that he thoroughly understood the averments made in his affidavit and the same are acceptable to him.

5 It will be appropriate to reproduce Paragraphs 2 to 7 of the affidavit filed by the 3rd Respondent, which read thus :-

- “2 *I say that dispute between us is amicably settled and accordingly I do not wish to prosecute case against the Petitioners.*
- 3 *As the dispute is amicably settled, I hereby give my consent/no objection for quashing of FIR No.459 of 2020 registered with Kurar Police Station, Mumbai.*
- 4 *I say that the present affidavit is executed without any force or coercion and I have no objection if the present FIR No.459 of 2018 registered with Kurar Police Station, Mumbai, which is lodged upon my complaint is quashed and/or set aside.*
- 5 *I say that disputes between us is amicably settlement out of my own freewill, therefore I do not wish to prosecute case against the Petitioners or pursue any legal proceedings against the Petitioners in the subject matter.*
- 6 *I say that dispute given rise to the present complaint is private in nature which establishes that no purpose will be served to conduct the trial*
- 7 *I say that present affidavit is executed for better and effectual quash/withdraw/NOC to set aside FIR No.459 of 2018 registered with Kurar Police Station, Mumbai.”*

6 The Petitioners are also present before this Court. On a specific query being put to them, whether they will again indulge in such type of incident, they replied and assured this Court that in future they will not give

any rise to the quarrel with the 3rd Respondent.

7 We have perused the injury certificate of the 3rd Respondent. There are three injuries, of which two are simple in nature, and one is grievous in nature. However, keeping in view the fact that, the 3rd Respondent was an indoor patient only for two days, we are of the opinion that the ingredients of Section 326 of the Indian Penal Code are not attracted.

8 Since the 3rd Respondent voluntarily and amicably settled the dispute with the Petitioners, it is crystal clear that he is not going to support the prosecution case, and therefore, the chances of conviction of the Petitioners would be bleak and remote. In view of the stand taken by the 3rd Respondent, which is reflected in his affidavit so also our interaction with the 3rd Respondent, no fruitful purpose would be served in continuation of further investigation in FIR No.459 of 2018.

9 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ 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 offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is

¹ 2012 (10) SCC 303

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.

10 In view of the amicable settlement between the parties and the affidavit filed by the 3rd Respondent, it is abundantly clear that Respondent No.3 is not going to support the allegations made against the Petitioners in the impugned FIR. In the light of the discussion in foregoing paragraphs and to secure the ends of justice and to prevent the abuse of the process of law/Court as also in the peculiar facts and circumstances of the present case, and since the Petitioners and the 3rd Respondent are relatives and they have settled the dispute amicably, this Writ Petition deserves to be allowed and the same is allowed in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court by its writ, order r direction of appropriate nature be pleased to quash and set aside the C.R. No.459 of 2018 registered with Kurar Police Station, punishable under section 326, 141, 143, 144, 147, 149, 324, 34 of Indian Penal Code, which is pending on the file of Ld. Hon’ble Metropolitan Magistrate, 67th Court, Borivali, Mumbai arising out of aid C.R. No.459 of 2018”

11 Rule is made absolute to the above extent and the Criminal Writ Petition stands disposed of accordingly.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]