

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1054 OF 2021

- | | | |
|----|----------------------------------|---------------------|
| 1] | Yogen Krishin Gidwani |] |
| | Age : 33 years, Occ : Service |] |
| | r/s. At E7 Konark Kinara CHS, |] |
| | Kalyani Nagar, Talera Park Lane, |]....Applicant/ |
| | Pune 411006 |] Accused No.1. |
| | |] |
| 2] | Kishori Krishin Gidwani |] |
| | Age ____ years, Occ : Service |] |
| | r/s. At E7 Konark Kinara CHS, |] |
| | Kalyani Nagar, Talera Park Lane, |]....Applicant/ |
| | Pune 411006 |] Accused No.2. |
| | |] |
| 3] | Late Ashok Rajaram Kambli |]..... Accused No.3 |
| | (Deceased) |] |

Versus

- | | | |
|----|---------------------------------------|-------------------------|
| 1] | The State of Maharashtra |] |
| | (Through Bangur Nagar Police Station) |]..... Respondent No.1. |
| | |] |
| 2] | Bharti Lachwani |] |
| | Age : 32 years, Occ : |] |
| | residing at 102/A Narmada Enclave |] |
| | Behind Maxus Mall, Bhayander West, |]..... Respondent No.2/ |
| | Thane – 401101 |] Org. Complainant. |

Mr. Vaibhav R Gargade for the Applicants/Petitioners.
Smt. A S Pai, APP for the Respondent No.1/State.
Mr. Siddharth Jaiswal for Respondent No.2.

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

Reserved on : 24th March 2021
Pronounced on: 25th March 2021

JUDGMENT (PER S S SHINDE, J)

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

The Petitioners have filed this Writ Petition for the following substantial relief :-

“(a) That this Hon’ble Court may be pleased to quash the Cr. No. 352/2019 dated 08.10.2019 registered at the office of Bangur Nagar Police Station for alleged offence punishable u/s. 498(A), 24 of IPC, 1860 on such terms and conditions as this Hon’ble Court may deem fit to grant in the circumstances of the case.”

2 Petitioner N.1 – Yogen Gidwani is the husband of Respondent No.2 – Bharti. The marriage of Petitioner No.1 and Respondent No.2 got solemnized on 18/11/2013. After marriage, they started co-habiting at the house of Petitioner No.1. It is alleged in the FIR that during the stay of the informant in the matrimonial house with the Petitioner No.1 along with other accused, on several occasions, the Petitioners mentally and physically abused the Respondent No.2. Therefore the Respondent No.2 lodged the FIR vide CR No.352 of 2019 with the Bangur Police Station against the Petitioners for the offences punishable under Sections 498(A), 34 of the Indian Penal Code.

3 The learned counsel appearing for the Petitioners and the learned counsel appearing for Respondent No. 2 jointly submit that the parties have amicably resolved/settled the disputes, and to that effect the Petitioners and Respondent No.2 have filed Consent Terms before the Family Court at Bandra, Mumbai. In terms of the said settlement, the Respondent No.2 has consented for a full and final settlement amount of Rs.20,00,000/- (Rupees Twenty Lakhs only).

4 It is submitted by the learned counsel for Respondent No. 2 that it is the voluntary act of Respondent No. 2 to arrive at settlement and give consent for quashing the impugned FIR.

5 This matter was on board yesterday i.e. on 24/03/2021 for hearing. At that time the 2nd Respondent was present in the Court. She was identified by her advocate. When we interacted with her, she stated that it is her voluntary act without coercion to enter into the settlement and file the consent terms before the Family Court at Bandra. She further stated that she has no objection for quashing the impugned FIR. In support of her aforesaid statements, she has filed her affidavit before this Court.

6 In paragraphs 1 to 4 of her affidavit, Respondent No.2 has stated

thus :-

- “1 I say that I have amicably agreed to resolve and to settle all my disputes complaints, DV Applications, Maintenance applications, FIR filed with the concerned Police stations, against Shri Yogen Krishin Gidwani and his family members filed by me which are pending before Hon’ble High Court at Mumbai bearing Writ Petition No.1054 of 2021 subject to Petitioner No.1, that is Shri Yogen Krishin Gidwani would lprovide me an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) as full and final settlement amount towards withdrawals of the cases and towards permanent alimony, and out of the same an amount of Rs.2,00,000/- has been provided by the Petitioner No.1 to the Respondent No.2 with respect to maintenance or lump sum full and final settlement amount for dissolving our marriage by withdrawing all the cases and quashing the FIR before the Hon’ble High Court Judicature at Bombay jointly and mutually;
- 2 I say that I give my consent to quash the FIR which is filed by me against the Petitioner and his families registered with Bangur Nagar Police Station for offences under Section 498A and 34 of the Indian Penal Code, 1860 bearing CR No.352 of 2019.
- 3 I say that, I do not wish to prosecute the present Applicants as he has abided by the terms of the Consent

Terms and I have forgiven him.

4. I say that, I am making this affidavit out of my free own will in the absence of coercion or undue influence from any person.”

7 Since the Petitioners and the 2nd Respondent have amicably settled the dispute and the said dispute arose out of matrimonial discord, and in view of the fact that the parties have already arrived at the consent terms filed before the Family Court, no fruitful purpose will be served by continuing the further investigation in the impugned FIR being CR No.352 of 2019 registered with Bangur Nagar Police Station against the Petitioners for the offences punishable under Sections 498A, 34 of the Indian Penal Code.

8 The Supreme Court in the case of **Giansingh 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 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 resolves 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

1 2012 (10) SCC 303

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 en-grafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

9 In the light of discussion in foregoing paragraphs, it is abundantly clear that the Respondent No. 2 is not going to support the allegations made in the impugned FIR and further continuation of investigation in impugned FIR being CR No.352 of 2019 registered with Bangur Nagar Police Station against the Petitioners for the offences punishable under Sections 498A, 34 of the Indian Penal Code, would tantamount to the abuse of the process of the Law/Court. Since the Respondent No. 3 is not going to support the allegations made in the impugned FIR, the chances of the conviction of the Petitioners would be remote and bleak. The entire dispute arose out of matrimonial discord. In that view of the matter, the writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court may be pleased to quash the Cr. No. 352/2019 dated 08.10.2019 registered at the office of Bangur Nagar Police Station for alleged offence punishable u/s. 498(A), 24 of IPC, 1860 on such terms and conditions as this Hon’ble Court may deem fit to grant in the circumstances of the case.”

10 The parties to abide strictly by the Consent Terms arrived at between them. Rule is made absolute to the above extent and, the Writ Petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]