

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 540 OF 2020

1. Vivek N. Madaan
Indian Inhabitant
Aged- 41 years,
Occ- Artist.
2. Narayandutt Madaan
Indian Inhabitant
Aged 70 years.
3. Nina Narayandutt Madaan
Indian Inhabitant
Age 60 years
Occ-Housewife
All Residing at, B-1705, Polaris,
Nirmal Galaxy, Opp. Johnson's
LBS Road, Mulund West,
Mumbai- 400080.

...APPLICANTS

Versus

1. The State of Maharashtra
Through the Senior Inspector
Powai Police Station.
2. Mrs. Tamanna V. Madaan
Indian Inhabitant,
Age 41 Years,
Occ- Banker,
Residing at A-501, Evening Glory,
Raheja Vihar, Near Chandivali Studio,
Andheri (E), Mumbai 400072.

...RESPONDENTS

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Mr. Sainand V. Chaugule for Applicants.

Mr. Udayan S. Jain a/w. Mr. Mayank Pandya for Respondent No. 1.

Mr. K.V. Saste, APP for State.

Mrs. Tamanna V. Madaan Respondent No. 1 present.

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

DATE : JANUARY 14, 2021.

ORAL JUDGMENT [PER S.S. SHINDE, J.]:

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.
2. This application takes an exception to the FIR No. 288 of 2018 filed by the Respondent No. 2 against the applicants for offences punishable under Section 498A & 406 and case pending pursuant thereto in the court of the learned 66th Metropolitan Magistrate being case number PW/595/2020.
3. Learned counsel appearing for the applicants and Respondent No. 2 submits that the parties have amicably settled the dispute and arrived at settlement and consent terms are filed before the Family Court. It is further submitted that the parties will strictly abide by the consent terms filed before the Family Court.
4. The parties are identified by their respective advocates. Learned counsel appearing for Respondent No. 2 has tendered across the bar the consent affidavit of Respondent No. 2, the same is taken on record. In the

said affidavit it is stated thus:-

- 1. That the Applicant No. 1 and I got married on 28th May 2006. That out of the wedlock one son namely Master Vihaan was born on 13th October 2013. That thereafter due to certain matrimonial discord, the Applicant No. 1 and I filed several Civil and Criminal proceedings against each other.*
- 2. That the present FIR No. 288 of 2018 was registered at my instance by the officials at Powai Police Station. That now the Applicant No. 1 and I have decided to settle all our matrimonial disputes amicably and in furtherance thereto the Applicant No. 1 and I have filed consent terms dated 12th February 2020 in ABA No. 1681 of 2018. That the said consent terms are annexed to the Application filed by the Applicants.*
- 3. That in compliance of the said consent terms dated 12th February 2020, the Applicant No. 1 has signed and registered the Release Deed relinquishing his share of 50% in the flat situated at A-501, Evening Glory, Raheja Vihar, Near Chandivali Studio, Andheri (E), Mumbai: 400072. That in further compliance of the said consent terms the Applicant No. 1 and I have also filed a Petition seeking divorce by mutual consent before the Ld. Family Court at Bandra.*
- 4. That in view of the aforesaid I give my consent for quashing the FIR No. 288 of 2018 registered at Powai Police Station and the consequential Criminal Case No. PW/595/2020 registered with the Ld. 66th Metropolitan Magistrate At Andheri.*
5. The Respondent No. 2 is present before this Court. She stated that it her voluntary act to enter into such settlement and give consent for

quashing the FIR impugned in the application.

6. Since the Respondent No. 2 does not wish to pursue the allegations in the FIR impugned in this application, further continuation of proceedings arising out of FIR No. 288 of 2018 would tantamount to the abuse of the process of the Court. The Respondent No. 2 is not going to support the allegations in the FIR and further continuation of proceedings would be an exercise in futility, since the chances of conviction of the applicants would be remote and bleak.

7. 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 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

1 2012 (10) SCC 303

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.

8. In the light of discussion in foregoing paragraphs, we are of the considered view that the application deserves to be allowed. Accordingly the application is allowed in terms of prayer clause (a), which reads thus:-

a. This Hon'ble Court be pleased to issue appropriate writ order or direction and quash and set aside FIR No. 288 of 2018 filed by the Respondent No. 2 against the Applicants for offences punishable under section 498A & 406 which is at Exhibit A and the case pending pursuant thereto in the court of Ld. 66th Metropolitan Magistrate being case number PW/595/2020.

9. Rule made absolute to above extent and application stands disposed of.

10. All parties to act upon an authenticated copy of this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)