

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.302 OF 2021

Balbir Singh Lamba]
Aged – 42 years, Occ : Business]
Having residential address as :-]
75/6B, Malabar Hill Road, Mulund Colony,]
Mulund (West), Mumbai – 400 082]..... Petitioner.

Versus

1] State of Maharashtra]
Through the Senior Inspector of Police]
Bhandup Police Station, Bhandup, Mumbai]
(In relating to F.I.R. No.578 of 2020]
Dated 21.11.2020 allegng offences]
u/s. 354, 354A, D. C of the I. P. Code)]
2] Kumari Gagandeep Kaushal]
D/o Surendra Pal Singh]
Aged – 26 years,]
Having her address as]
Room No.1303, A-Wing, Chheda Height,]
LBS Marg, Opp. Asian Paints,]
Bhandup (West), Mumbai – 400 078]..... Respondents.

Mr. Vivek Shukla i/by Mr. Devendra Mishra for the Petitioner.
Mr. K V Saste, APP for the Respondent No.1/State.
Mr. Rajesh Kanojia i/by Mr. Aamir Khan for the Respondent No.2.
Petitioner and Respondent No.2 present through Video Conferencing.

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

DATE : 13th August 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 By this Writ Petition the Petitioner takes an exception to the FIR No.578 of 2020 dated 21.11.2020 registered at the instance of the Respondent No.2 with Bhandup Police Station for the offences punishable under Section 354, 354(A) (D), (C) of the Indian Penal Code.

3 The learned counsel appearing for the Petitioner and the 2nd Respondent jointly submit that the parties have amicably settled the dispute and, the 2nd Respondent has given consent for quashing the impugned FIR.

4 The 2nd Respondent has filed the affidavit. Paragraphs 1 to 5 of the said affidavit are reproduced herein under for ready reference.

"1 I have lodged FIR No.578 of 2020 dated 21.11.2020 at Bhandup Police Station for offences u/s. 354, 354A, D, C of I.P. Code against Balbir Singh Lamba.

2 I say that said offences are based on the incident that happened on 16.11.2020, which was misunderstood by me as if Balbir Singh Lamba was outraging my modesty, stalking and did voyeurism. I say that Balbir Singh later on clarified that he was taking photos of the premises at the instructions of Mr. Manvir Singh. While taking the photographs of the site from his mobile phone, I went near Balbir to ask why he was taking the photos and in that process, Balbir's elbow touched my shoulder. This was misunderstood as outraging modesty by the Complainant, whereas, Balbir Singh was only taking the photographs of the activities going on at the business premises. After listening to the explanation of Balbir Singh in this regard, I realized that due to

misunderstanding I was too scared and lodged the F.I.R. with the Bhandup Police bearing No.578 of 2020 on 21.11.2020.

- 3 *After registration of F.I.R., the Police attempted to arrest Balbir Singh Lamba, when, this news was heard by Mr. Gurmukh Singh Sihan, President of Thane Highway Gurudwara who knew all the parties for several years and as such, he contracted my father, myself, Manvir Singh and Balbir Singh and organized a joint meeting to known what actually transpired on that day and to explore the possibility of any probable settlement.*
- 4 *Said mediator Mr. Gurmukh Singh Shan afterwards convened a meeting of all the parties at Thane Highway Gurudwara on 03.12.2012 in the presence of the eminent persons of the Society, in whichy, both the parties presented their sides, showed the photographs, video recording. Manvir Singh and my father also placed their corresponding sides about their ongoing dispute. After considering all the facts, both the parties viz. I and the accused – Balbir Singh agreed that the entire dispute arose out of misunderstanding, fear psychosis caused in the mind of Respondent No.2 whereas, actually, Balbir Singh did not have any intention mush less bad intention against me. Mr. Balbir Singh Lamba in the said meeting stated before Guru-Granth Sahib that he neither has nor ever had any ill-intention against Ms. Gagandeep Kaushal, he always considered her as his younger sister and that even in his wildest dreams also, he cannot think about anything bad about Ms. Gagandeep Kaushal, leve aside outraging her modesty, stalking etc.*
- 5 *Accordingly, I execute this Affidavit and give Consent for quashing of the said F.I.R. I say that I execute this Affidavit without any fear, pressure, coercion on me out of my own sweet will.”*

5 The Petitioner and the 2nd Respondent are present before this Court through video conferencing. The parties are identified by their respective

advocates. We have interacted with the 2nd Respondent through video conferencing. During interaction the 2nd Respondent has stated that it is her voluntary act to arrive at amicable settlement and file the affidavit before this Court and join the prayer of the Petitioner for quashing the impugned FIR. It is stated that the impugned FIR was filed out of misunderstanding and now in view of the settlement, the said misunderstanding has been removed and cleared, and she has given consent for quashing the impugned FIR on her own volition.

6 It is true that the offence alleged is under Section 354 of the Indian Penal Code, however, keeping in view of the averments in the affidavit filed by the 2nd Respondent and her statement before this Court that it is her voluntary act to enter into such settlement and give consent for quashing the impugned FIR, in our opinion, no fruitful purpose would be served by continuing further investigation in FIR No.578 of 2020 registered against the Petitioner at the instance of the 2nd Respondent with the Bhandup Police Station for the offences punishable under Sections 354, 354(A), (D), (C) of the Indian Penal Code.

7 In view of the averments in the affidavit filed by the 2nd Respondent, it is crystal clear that the 2nd Respondent is not going to support the allegations in the FIR and the chances of conviction of the Applicants

would be bleak and remote.

8 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 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.

9 In the light of the discussion in foregoing paragraphs and in the peculiar facts and circumstances of this case as also keeping in view of the

1 2012 (10) SCC 303

averments in the affidavit that, the impugned FIR has been filed due to misunderstanding, exposition of law by the Supreme Court in Gyansingh's case (supra), and in order to secure ends of justice and to prevent the abuse of process of law/court, the Writ Petition deserves to be allowed. Hence the following order.

10 The Criminal Writ Petition is allowed in terms prayer clause (A) which reads thus :-

(A) That, this Hon'ble Court in exercise of power under Article 226 of the Constitution of India, 1950 read with inherent powers u/s. 482 of Cr.P.C. 1973 be pleased to quash and set aside the F.I.R. No.578 of 2020 dated 21.11.2020 alleging offences u/s. 354, 354(A), (D), (C) of I P Code registered at Bhandup Police Station mutual consent of the Respondent No.2, the Complainant (Ms. Gagandeep Kaushal)."

Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

11 All concerned parties to act upon an ordinary copy of this order duly authenticated by the Court Sheristedar.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]