

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

CRIMINAL WRIT PETITION NO. 1564 OF 2021

Mr. Raees Ahmed Mohammed Amin Khan
& Ors.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. Ashok Rl Jaiswar for Petitioners.

Mrs. Shilpa Pawar for Respondent No. 2.

Respondent No. 2 is present through video conferencing.

Mr. S.R. Shinde, APP for State.

...

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

DATE : 17th JULY, 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 petition is filed with following substantive prayer:-

a) That the present CR. Vide No. 102/2020, vide court case No. 783/PW/2020, is pending before Ld. Metropolitan Magistrate court 46th court Mazgaon Mumbai, may be quash, and set aside by This Hon'ble Court.

3. Learned counsel appearing for the petitioners and 2nd respondent jointly submit that the petitioners and 2nd respondent have amicably settled the dispute and 2nd respondent has filed affidavit thereby giving consent for quashing the impugned FIR and charge sheet.

4. Respondent No. 2 is present before us through video conferencing. We have interacted with her. She stated that it is her voluntary act to enter into the amicable settlement and give consent for quashing the impugned FIR and charge sheet.

5. Respondent No. 2 has filed the affidavit. Paragraphs 3 to 12 of the said affidavit read as under:-

3. I say that I am filing the present affidavit for the limited purpose to admit that the MOU dated 02/11/2020 executed between myself and the other accused in both the Case Nos. 1168/PW/2018 filed u/s. 498(A), 354, 324, 506 and 34 and 783/PW/2020 filed u/s. 509, 341, 504 ad 34 pending before the Metropolitan Magistrate, Sewree, Mumbai.

4. I say that I have filed the Case Nos. (i) 1168/PW/2018 and (ii) 783/PW/2020, against the Petitioners (Orig. Accused) who all are the family relatives and therefore, during the pendency of these proceedings the Petitioners (Orig. Accused) approached the Applicant to settle these disputes

mutually and pursuant thereto meetings were held between both the parties.

5. *I say that pursuant to those meetings both the parties have arrived to the settlement that, if the Respondent No. 2 (Original Complainant) and her husband i.e. the Respondent no. 4 (Mr. Modh Matin Khan) shifts to other place, then the family disputes which were arrived in the past and may have arisen in future between the parties can be estopped.*

6. *I say that the Petitioners (Orig. Accused) made a proposal that they will give the share of the Respondent No. 4 i.e. my husband, to both of us, to purchase and/or take house for their residence and in that residence/place three of them i.e. myself, Respondent no. 4 (husband) and their son viz. Abdul Wadud Khan can reside peacefully.*

7. *I say that to give a good future and family life to my son viz. Abdul Wadud Khan, who is 8 years old, I thought over the proposal given by the Petitioners (accused) and decided to give a chance to a marriage life.*

8. *I say that accordingly after discussions, both parties have arrived at a settlement that the Respondent nos. 2 to 7 will hand over a Demand Draft being no. 571071, drawn on Union Bank of India, for an amount of Rs. 7,00,000/- (Rupees Seven Lacs Only) in the name of the Petitioner No. 4 (Orig. Accused No. 4) i.e. my husband and from the said amount the Petitioner No 4 along with me will take the place on rent/ownership basis.*

9. *I say that for the betterment of my son Abdul Wadud Khan who is 8 years old, I*

agreed for the said proposal given by the Petitioners (Orig. Accused) and accordingly a MOU was executed on 03/11/2020. I say that after execution of the said MOU, the Petitioners (Orig. Accused) filed the above writ petition for quashing both the Case Nos. (i) 1168/PW/2018 and (ii) 783/PW/2020.

10. I say that as per the order dated 30/06/2021, the Petitioners (Orig. Accused) had handed over the Demand Draft being no. 571071 in the name of the Petitioner No. 4 (husband). However, the name printed on the said Demand Draft was incomplete and therefore, the Bank returned the said Demand Draft.

11. I say that therefore, on 05/07/2021 the Petitioners have transferred the said agreed amount of Rs. 7 Lacs from the account of Petitioner No. 1 into the joint account of me and the Petitioner No. 4 (husband) bearing UTR No. UBINR22021070501566594 dated 06/07/2021 and the Petitioner No. 4 has given the said amount to me, as per the MOU dated 03/11/2021 to take the premises on rent/ownership basis. Hereto annexed and marked as Exhibit "B" is a copy of the payment transfer form.

12. I say that on the basis of Memorandum of Understanding dated 03/11/2020, I am by my free will withdrawing all the allegations levied against all the accused in Case Nos. (i) 1168/PW/2018 and (ii) 783/PW/2020 and do not want to proceed further in both the cases.

6. Since the parties have amicably settled the dispute and 2nd respondent has filed the affidavit thereby giving consent for quashing the impugned proceedings, no fruitful purpose will be served by continuing the proceedings i.e. 783/PW/2020 pending before the Metropolitan Magistrate 46th Court, Mazgaon, Mumbai, arising out of CR No. 102/2020 registered with Agripada Police Station, for the offences punishable under Section 509, 341, 504 read with 34 of IPC.

7. 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

1 2012 (10) SCC 303

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, to secure the ends of justice and prevent the abuse of the process of court, the petition deserves to be allowed. Accordingly, the petition is allowed in terms of prayer clause (a), which is reproduced hereinabove in para 2.

9. Rule made absolute to above extent. The writ petition stands dispose of.

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

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)