

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3619 OF 2021

Shobhit Vijendra Attray
and others

.... Petitioners

Versus

Nisha Madanlal Sharma
and another

.... Respondents

....

Mr. Diwakar Dwivedi, Advocate i/b. Pankaj Dwivedi, for the
Petitioners.

Mr. S.K. Pandey, Advocate for Respondent No.1.

Mr. Shahajirao R. Shinde, APP, for Respondent No.2-State.

Mr. Sunil Gade, PSI, Oshiwara Police Station is present.

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**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 14 OCTOBER 2021

P.C.

Rule. Rule is made returnable forthwith with consent.

2. This is a Petition for quashing of the proceedings pending before the Metropolitan Magistrate, Railway Mobile Court, Andheri vide C.C. No.2512/PW/16 under Sections 323, 324, 504, 506 read with 34 of the Indian Penal Code.

3. Petitioner No.1 was the husband of Respondent No.1. Petitioners No.2 & 3 are his parents.

4. The FIR was lodged by Respondent No.1. She has stated that she got married with Petitioner No.1 in the year 2012 and they have a son who was two years of age at the time of lodging of the FIR on 8 June 2015. After her marriage, she was residing with her husband at Malad, Mumbai and then at Petitioner No.1's sister's house at Santacruz. She went to her parental house for delivery of her first child. After that she went to reside in Petitioner No.1's house at Meerut, but, she was not allowed to reside there. She was asked to bring money from her parents for buying a new house. After that, though Petitioner No.1 was in touch with Respondent No.1, he did not give her his address in Mumbai.

5. In 2014, she lodged a complaint against Petitioner No.1 under Section 498-A of IPC in Haryana. The subject matter of this Petition is the incident dated 6 June 2015. Respondent No.1 had come to Petitioner No.1's house at Oshiwara, Mumbai on the suggestion of the Petitioners' relatives. Respondent No.1 came there with her mother and a friend. At that time, all the Petitioners were present in the house. There was some exchange of words. Petitioner No.1's sister gave a blow on Respondent No.1's shoulder and Petitioner No.1 gave her kick and fist blows. Respondent No.1's mother was also assaulted by Petitioner No.2. In the incident, the small child fell down and suffered some minor injuries. Respondent No.1 and her mother were thrown out of the house. They informed the police. The police came there and immediately a N.C. vide

No.1889/2015 at Oshiwara Police Station was lodged. On 8 June 2015, the FIR was lodged at the same police station vide C.R. No.266/2015. The investigation was carried out and the charge-sheet was filed.

6. Now this Petition is filed for quashing of these proceedings by consent.

7. Heard Shri Diwakar Dwivedi, the learned counsel for the Petitioners, Shri S.K. Pandey, the learned counsel for Respondent No.1 and Shri Shahajirao Shinde, the learned APP for Respondent No.2-State.

8. We have perused the injury certificates. Respondent No.1's son had suffered one simple injury on right ankle. Respondent No.1 herself had suffered three simple injuries and her mother had suffered pain on right ankle and left toe. Thus, all the injuries were minor.

9. In that context, we have perused the affidavit affirmed by Respondent No.1. In the said affidavit, she has stated thus :

“1) The Petitioner No.1 married to me on 30th January 2012 and out of said wedlock a son viz. Shivansh Shobhit Attray was born on 9th June, 2013. Since the petitioner No.1 had treated me with cruelty therefore I lodged a complaint with Oshiwara Police Station which was recorded vide CR No.266 of 2015 against petitioners. It appears that the charge sheet is filed by Oshiwara Police Station and the case is numbered as 2512/PW/2016. Respondent

No.1 and petitioner No.1 filed petition for Divorce by Mutual Consent u/s 13B of Hindu Marriage Act before the Court of Miss Nandita Kaushik, Additional Principal Judge, Family Court, Yamunanagar, Jagadhri, Haryana, vide CIS No.HMA/201/2021. On 8th March, 2021, petitioner No.1 and respondent No.1 settled the dispute amicably and a Consent Terms came to be filed between petitioner No.1 and respondent No.1. The marriage solemnized between petitioner No.1 and respondent No.1 dated 30th January, 2012 was to be dissolved on the terms and conditions stipulated in the said Consent Terms. The said consent terms is annexed to the petition as EXHIBIT-B. I crave leave to refer to and rely upon the consent terms, when produced.

- 2) *In the said consent terms, I have given undertaking to cooperate with the petitioner to quash/ dispose/withdraw the proceedings and file necessary affidavit as required. In view of the undertaking, I hereby confirm that the dispute between petitioners and myself is amicably settled pursuant to consent terms dated 8th March, 2021 therefore I hereby consent for quashing of the FIR No.266 of 2015 and CC No.2512/PW/2016.”*

10. The learned counsel for Respondent No.1 also endorsed her wish to quash the proceedings.

11. The injuries are minor. The incident appears to be a private incident between the parties. The society at large is not involved. Therefore by quashing of these proceedings there will be no adverse

effect on the society as such. Therefore, based on the guidelines mentioned in the case of *Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303*, we find that this is a fit case for quashing of the proceedings.

12. Hence, the following order :

:: O R D E R ::

- i. Rule is made absolute in terms of prayer clause (a) which reads thus :

“(a) The Hon’ble Court be pleased to call for the records and proceedings of C.R. No.2512/PW/16 filed before the Metropolitan Magistrate, Railway Mobile Court, Andheri, and in view of the settlement arrived at between the petitioners and respondent No.1, the proceedings vide C.C. No.2512/PW/16 be quashed.”

- ii. The Petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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