VISHWANATH SATYANARAYANA SHERLA
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.1431 OF 2019

Sreejit Viswanathan Pillai & Others … Applicants

Versus

State of Maharashtra & another … Respondents

Ms.S.G. Randhe for the Petitioners

Ms.Sangeeta Shinde, APP, for Respondent – State

Mr.B.V. Magam for Respondent No.2

Respondent No.2 – present in Court.

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

DATED: SEPTEMBER 1, 2021

ORAL JUDGMENT (PER SHRI S.S. SHINDE, J.):

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

2. This Application takes exception to filing of First Information Report No.416 of 2016 for offences punishable under sections 498-A, 406, 323 read with section 34 of the Indian Penal Code

registered with Andheri Police Station, and the consequent Criminal Case No.1302/PW/2017 filed in the Court of Metropolitan Magistrate, 65th Court at Andheri, Mumbai.

3. Learned Counsel appearing for the Applicants and Respondent No.2 jointly submit that the parties have amicably settled the dispute and to that effect, consent terms have been filed before the Family Court at Bandra, Mumbai. A copy of the said consent terms is placed on record in the compilation of this Writ Petition.

4. Respondent No.2 has also filed an affidavit. In the said affidavit, it is stated by Respondent No.2 in paragraphs 4 to 6 as under:

> "4. With reference to para 4 of the said application, I say that the contentions in para 4 are true. I say that it is true that during pendency of the aforementioned criminal case the respondent no.2 has file M.J. Petition no.A-2881 for divorce under section 13(1) (ia) and (ib) of Hindu Marriage Act, 1955, at Family Court Mumbai, Bandra. It is true that the Applicant No.1 and I the Respondent No.2 amicably settled all the disputes amongst ourselves. It is true that in view of the settlement of our disputes, We the Applicant No.1 and the Respondent No.2 have converted the said Divorce Petition under section 13-B of Hindu Marriage Act, 1955. It is true that we have prepared and signed consent terms for Mutual Consent Divorce before the Hon'ble Family Court dated on 24th April 2019. It is true that photocopy of the said

consent terms dated 31.3.2017 is annexed and marked as Annexure "B" colly. with said Application.

5. With reference to para 5 of the said Application, I say that the total contentions in said para is true. It is true that I received all my stridhan and I do not claim any maintainance as I am MBA Degree holder from Mumbai University and working/helping my father in his company business. I further say that we have withdrawn all the allegations against each other and our relatives and mutually decided to take Divorce u/s 13-B of Hindu Marriage Act, 1955.

6. With reference to para no.6 of the said Application, I say that it is true that the Applicants 1 – 3 therefore approach this Hon'ble Court for quashing of the entire proceeding of C.C. No.1302/PW/2009 before the Ld. Addl. Chief Metropolitan Magistrate's Railway mobile Court, at Andheri-Mumbai pending in the file of the learned inter-alia on the following grounds:

A. I submit that the ground A is true and therefore it is true that the Applicants No.1 and the Respondent No.2 have amicably settled the disputes amongst themselves and they have no grievance against each other. I say that it is true that I the Respondent No.2 does not wish to proceed against the Applicants No.1 to 3.

B. It is submitted that the present proceeding against the Applicants would be a futile exercise in view of the settlement of all the disputes amongst themselves. Further it has been observed by the apex court in catena of judgements that in the matrimonial offences it is bounden duty to encourage genuine settlements of matrimonial disputes. Thus it is necessary in the interest of justice to quash the proceedings.

C. I state and submit that the Hon'ble Supreme Court while dealing with the cases of quashing of matrimonial cases in B.S. Joshi vs. State of Haryana reported in (2003) 4 SCC 675 after referring to various earlier judgments has held that the High Court in exercise of its inherent powers can quash criminal proceedings or F.I.R. or complaint and

Section 320 Code does not limit or affect the powers under Section 482 of the code. The Hon'ble Supreme Court further held that where the settlement in matrimonial disputes is genuine, the High Courts can quash the proceedings.

D. It is true that the Applicants have no other speedy, efficacious legal remedy other than to approach before this Hon'ble Court under section 482 Cr.P.C. for the relief prayed therein.

E. It is true that no other application has been filed by the applicants before this Hon'ble Court or Hon'ble Supreme Court, for the similar relief.

F. It is therefore submitted that I have no objection to allow Applicant's said application No. APL__/2019 and grant reliefs as prayed by them in said prayer clause No.(a) to (e).

5. We have interacted with Respondent No.2. She stated that it is her voluntary act to enter into amicable settlement with the petitioner and join the prayer of the petitioner for quashing the First Information Report.

6. Since the parties have amicably settled the dispute, no fruitful purpose will be served by continuing further proceedings i.e., Criminal Case No.1302/PW/2017 filed in the Court of Metropolitan Magistrate, 65th Court at Andheri, Mumbai arising out of First Information Report No.416 of 2016 for offences punishable under sections 498-A, 406, 323 read with section 34 of the Indian Penal Code registered with Andheri Police Station.

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 offences 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.

1 2012 (10) SCC 303

8. In view of the discussion in the foregoing paragraphs, in our considered opinion, further continuation of First Information Report No.416 of 2016 for offences punishable under sections 498-A, 406, 323 read with section 34 of the Indian Penal Code registered with Andheri Police Station and the consequent Criminal Case No.1302/PW/2017 filed in the Court of Metropolitan Court, 65th Court at Andheri, Mumbai, would be an exercise in futility as Respondent No.2 would not support the prosecution case and the chances of conviction of the applicants would be remote and bleak.

9. In that view of the matter, in order to secure the ends of justice and to prevent further abuse of the process of concerned Court, we are inclined to allow the petition. Accordingly, the petition is allowed and Rule is made absolute in terms of prayer clause (b), which reads as under:

> "(b) This Hon'ble Court be pleased to quash the Proceedings of C.C. No.1302/PW/2017, pending before the Ld.Metropolitan Magistrate 65th Court at Andheri – Mumbai arising out of F.I.R. No.416 of 2016 Andheri Police Station."

10. Rule made absolute in the above terms. Writ Petition stands disposed off accordingly.

(N.J. JAMADAR, J.) **(S.S. SHINDE, J.)**