

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5918 OF 2019

Ayasha Hussainali Khan @
Aysha Mohammad Isiam Khan
Age 39 years, occ : Unemployed
Residing at Room No.696
Plot No.7, Bharat Nagar,
Bandra (East),
Mumbai – 400 051

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]..... Petitioner.

Versus

- 1] State of Maharashtra
(Through Oshiwara Police St.

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2] Mr. Mehmood Rehan Khan
Age 64 years, occ Retired

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3] Hasmati Bi Mehmood Khan
Age 60 years, occ : Housewife

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4] Mrs. Shahida Mehmood Khan
Age 37 years, occ : Teacher

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5] Mrs. Rashida Faheem Ansari
Nee Rashida Mehmood Khan
Age 34 years, Occ : housewife

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6] Hasan Ali Mehood Ali Khan
Age 44 years, occ : Service

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7] Sajid Mehmood Pathan Khan
Age 34 years, Occ : Service

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All residing at R/at : Room No.201,
A/Wing, Basera Apt,
Opp Sagar Tower, S. V. Road,
Jogeshwari (W), Mumbai – 400102

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]..... Respondents.

Ms. Amani Khan a/w Ms. Shipra Tanna for the Petitioner.
Mr. V B Konde-Deshmukh, APP for the Respondent No.1/State.
Ms. Yogita Joshi for Respondent Nos.2 to 7.
Petitioner is present through Video Conferencing.

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

DATE : 06th August 2021

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

1 Rule. Rule made returnable forthwith and heard with the consent of the learned counsel for the parties.

2 This Petition is filed by the Petitioner, who is the original informant, for the following substantive relief :-

(a) This Hon'ble Court be pleased to issue an appropriate writ order, direction or any other appropriate order thereby quashing and setting aside case number 2816/PW/09 pending before the 65th Metropolitan Magistrate at Andheri Mumbai, u/s 498(A) and 34 of IPC arising out of FIR168/2009 dated 23.05.2007 & holding the same liable to be quashed and set aside in the interest of justice, equity and good conscience."

3 The Petitioner is present for interaction through video conferencing. She is identified by her advocate. We have interacted with the Petitioner through video conferencing and ascertained whether it is her voluntary act to file this Petition and pray for quashing the proceedings pending before the 65th, Metropolitan Magistrate, Andheri, Mumbai. The

Petitioner stated that it is her voluntary act without any coercion to approach this Court by way of this Petition and pray therein for quashing the impugned FIR and the aforesaid proceedings pending before the 65th, Metropolitan Magistrate, Andheri, Mumbai.

4 The Petitioner has filed the affidavit in support of this Petition. Paragraph Nos. 2 to 6 of the affidavit of Petitioner read as under :-

- “2 *I say that I am the First Informant in the FIR 168/2009 dated 23.05.2009 registered in Oshiwara Police Station and later on Charge-sheet was filed. The respondent no.2 to respondent no.6 are all accused in the case number 2816/PW/09 pending before the 65th Metropolitan Magistrate at Andheri. I say that respondent no.5 Hasan Ali Mehmood Ali Khan is my former Husband and rest are my in-laws.*
- 3 *I say that I am currently residing at the above-mentioned address with my two children Mss Bushra Hsanali aged 14 years & Master Abdul Ahad 12 years. I retain custody of both the children.*
- 4 *I say that I have received a Demand Draft dated 19.11.2019 of amount INR 5,12,786 belonging to Union Bank Jogeshwari West, Mumbai drawn in my favor as a one-time settlement amount in pursuant of the settlement.*
- 5 *I say that I am already divorced and there are no other pending proceedings except 01/DV/2010 for which I have already given my no objection to withdraw the said proceedings. The court was vacant on the last date and therefore that case will be withdrawn on the up-coming court date.*
- 6 *I say that I have no claims to make from the respondents*

of this Writ Petition and I wish to concentrate on my life and well-being as well as the well-being of both my children and therefore I have filed this Writ Petition by my own free will in order to quash and set aside case number 2816/PW/09 pending before the 65th Metropolitan Magistrate at Andheri.”

5 The learned counsel appearing for the Respondent Nos.2 to 7 submits that the Respondent Nos.2 to 7 have no objection for quashing the impugned FIR and the aforesaid proceedings pending before the 65th, Metropolitan Magistrate, Andheri, Mumbai and allowing this Petition in terms of prayer clause (a).

6 The parties have amicably settled the dispute and the Petitioner stated that divorce has already taken place between her and Petitioner - Husen Ali Khan, and therefore, she is not interested in continuing the aforesaid proceedings i.e. Case No.2816/PW/09, pending before the the 65th, Metropolitan Magistrate, Andheri, Mumbai arising out of FIR No.168 of 2009 registered with Oshiwara Police Station.

7 Since the Petitioner, who is the first informant, is not interested in prosecuting the Case No.2816/PW/09, pending before the the 65th, Metropolitan Magistrate, Andheri, Mumbai arising out of FIR No.168 of 2009 registered with Oshiwara Police Station, no fruitful purpose will be served by continuing the further proceedings in Case No.2816/PW/09, pending before

the 65th, Metropolitan Magistrate, Andheri, Mumbai arising out of FIR No.168 of 2009 registered with Oshiwara Police Station.

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 Since, in view of the amicable settlement, the Petitioner is not

1 2012 (10) SCC 303

going to support the prosecution case, continuation of the further proceedings in Case No.2816/PW/09, pending before the the 65th, Metropolitan Magistrate, Andheri, Mumbai arising out of FIR No.168 of 2009 registered with Oshiwara Police Station would tantamount to the abuse of the process of the Court.

10 In the light of the discussion in the foregoing paragraphs, in order to secure the ends of justice and to prevent the abuse of process of the Court, the Writ Petition deserves to be allowed. Accordingly the Writ Petition is allowed in terms of prayer clause (a). Rule made absolute in the above terms. The Writ Petition stands disposed of.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]