

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5980 OF 2019

Amol Dhondibhau Chavan
and others

.... Petitioners

Versus

The State of Maharashtra
and another

.... Respondents

....

Mr. Prashant Patil, Advocate for the Petitioners.

Ms. M.H. Mhatre, APP for Respondent No.1 -State.

Ms. Vaishnavi Gujarathi, Advocate for Respondent No.2 (appointed).

Ms Pranali Amol Chavan, Respondent No.2 is present in the Court.

....

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.
DATE : 07 DECEMBER 2021**

P.C.

Heard the learned counsel for the parties. Taken up for disposal.

2. By this petition, the petitioners are seeking to quash the FIR being Crime No.452/2019 registered with Kasturba Marg Police Station, Mumbai.

3. The Petitioners have sought following prayer:

“aa) *That this Hon’ble Court by any appropriate writ or direction be pleased to quash and set aside the proceeding of Criminal Case*

No.6801743/2021 (CNR No.MHMM17-005525-2021) pending before the Addl. Chief Metropolitan Magistrate, Borivali arising out of proceedings of FIR/Crime No.452 of 2019 registered with the Kasturbamarg Police Station for the offence punishable u/s. 498A, 406, 323, 504, 506 and 34 of I.P.C.;"

4. The Petitioners have sought quashing of the FIR on the ground that the Respondent No.2 has given consent for the same. The Respondent No.2 is present in the Court in person. We had requested Ms. Vaishnavi Gujarathi the learned Advocate to assist and represent the Respondent No.2, to which she has agreed. Accordingly we appointed Ms.Vaishnavi Gujarathi the learned advocate to represent the Respondent No.2.

5. The learned counsel for the Respondent No.2 states that the Respondent No.2 has now executed an affidavit that the disputes are settled and she is giving consent for quashing of the FIR. The learned counsel also states that upon interaction the Respondent No.2 has reiterated that she is giving consent and that the consent is also given in the form of consent terms tendered in the Court of Senior Division, Thane.

6. The learned counsel state that these criminal proceedings arising from matrimonial dispute can be quashed by consent in light of the decision of the Hon'ble Supreme Court in the case of *Gian Singh Vs. State of Punjab and another*, reported in (2012) 10 SCC 303, more particularly the following observations :

“The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. 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. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

7. The Petitioner No.1 is the husband of the Respondent No.2. The Petitioner No.2 is the father-in-law and the Petitioner No.3 is the mother-in-law of the Respondent No.2. The Petitioner No.1 is a Chartered Accountant and the Respondent No.2 is a Doctor by profession.

8. The Respondent No.2 filed FIR on the ground that she was subjected to mental and physical cruelty on demands of dowry.

9. A Petition was filed in the Court of Civil Judge, Senior Division, Thane. In a petition for divorce consent terms came to be filed between the parties, a copy of which is tendered on record. The

consent terms record that there will be divorce by mutual consent and that the Respondent No.2 will give consent for quashing of the present FIR. In the affidavit also the Respondent No.2 has reiterated this understanding between the parties.

10. It is clear from the above narration that the FIR was a result of matrimonial dispute which now stands resolved. The parties have amicably parted ways and intend to get on with their lives. Not quashing the FIR would be harassment to the parties. The dispute does not have large scale implications on the society and, therefore, the contention of the learned counsel that the *dicta* of the Hon'ble Supreme Court in the case of *Gian Singh* (supra) is applicable, is correct. Accordingly, the Writ Petition is allowed in terms of prayer clause (aa) as reproduced above. Order accordingly.

11. The writ petition is accordingly disposed of in above terms.

12. The advocate appointed for the Respondent No.2 will be entitled to the fees as per the Rules. Copy of this order be sent to the Registry accordingly.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2021.12.09 11:29:54
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(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)