

Mohsin Ahmed Nisar Ahmed Shaikh ... Petitioner
V/s.
State of Maharashtra and anr. ... Respondents

Mr. Sagar Tambe i/b Mr. Ritesh Thobde for the Petitioners.
Mr. J.P. Yagnik, APP for the Respondent No.1 – State.
Mr. M.S. Mulla for Respondent No.2.

**CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.**

DATE : 24 AUGUST 2022.

P.C.

The present petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No.0904 of 2020 (hereinafter referred to as “FIR”, for short) dated 10 September 2020 registered at Vijapur Naka Police Station, Dist. Solapur against the Petitioner for the offences punishable under Sections 498(A), 494, 506 and 376 of the Indian Penal Code (IPC), Sections 9 and 11 of the Prohibition of Child Marriage Act and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act and Special Case No. 316 of 202 arising out of said FIR.

2. The learned Counsel for the Petitioner and the Respondent No.2 jointly submit that the parties have amicably settled the dispute and now they are cohabiting together. It is submitted that no purpose would be served by keeping the prosecution alive, in view of the settlement arrived at between the parties. The learned Counsel for the parties submit that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Gian Singh vs. State of Punjab*.¹

3. The Respondent No.2 has filed the consent affidavit dated 19 August 2022. Respondent No.2 has stated that pursuant to amicable settlement, she went back to her matrimonial home and they are cohabiting together. Respondent No.2 has stated that she has no objection if the FIR in question is quashed in view of the settlement arrived at between the parties.

4. We have interacted with Respondent No.2. The act of Respondent No.2 to give no objection to quash the FIR in question appears to be voluntary.

5. The Hon'ble Supreme Court in the case of *Gian Singh (supra)* has held :

“But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing

¹ (2012) 10 SCC 303

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 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.”

6. We have examined the facts of the present case in the light of law laid down by the Hon’ble Supreme Court in *Gian Singh’s* case.
7. The Petitioner has filed additional affidavit-cum-undertaking, in following terms:

“1. I state that, I had filed the above Petition seeking to quash and set aside the FIR registered against me at Vijapur Naka Police Station vide C.R. No. 004/2022 at behest of my wife- (Respondent No. 2 in the captioned matter).

2. I state that, I and Respondent No. 2 have married each other on 15.07.2017 as per rituals and customs prevalent in our community. Thereafter I had left to kingdom of Saudi Arabia for pursuing study at the Islamic University of Almadinah Almuawarah. Pursuant to which, the Respondent No., felt deserted by me and due to this misunderstanding, she had lodged FIR U/s. 498-A of IPC against me on 01.09.2020. Thereafter, I had returned in India and appeared before Police upon notice U/s. 41-A of

CrPC. Upon my appearance before the Police, another statement of the respondent No. 2 was recorded in which she alleged the offences u/s. 376 of IPC and U/s. 4,8 and 12 of the POCSO Act against me.

3. Be that as it may, I wish to state my wife (Respondent No. 2) and I have amicably resolved our issues and have decided to live together in harmony alongwith my parents in the abovementioned address at Solapur. It has been past 7 months, since we are living together under one roof without any complaint against each other. In the future also I solemnly undertake before this Hon'ble Court that I shall continue to treat my legally wedded wife in proper manner as per the prevailing rights and customs of our community.

4. It is my humble undertaking before this Hon'ble Court that in case I have to leave the country for my studies or my job then I shall endeavor to take my wife alongwith me to wherever I go, subject to visa clearances if any of the said country."

8. Similarly, the parents of Petitioner have filed affidavit-cum-undertaking in following terms:

"A. We state that, we are the parents of the Petitioner above captioned matter. Our son Mohsin Ahmed Nisar Ahmed Shaikh has filed the above Petition seeking to quash and set aside the FIR registered against him at Vijapur naka Police Station vide C.R. No. 904/2020 at the behest of our daughter-in-law – (Respondent No.2 in the captioned matter).

B. We state that, Our Son – Petitioner herein Respondent No. 2 had married each other on 15.07.2017 as per rituals and customs prevalent in our community. Thereafter our son had left to kingdom of Saudi Arabia for pursuing his study at the Islamic university of Almadinah Almunawarah. Pursuant to which, the Respondent No. 2,

felt deserted by her husband and due to this misunderstanding, she had lodged FIR U/s. 498-A of IPC against our son on 01.09.2020. Thereafter, our son arrived in India and he was served with a notice U/s. 41-A of Cr.P.C. by the Police. Upon his appearance before the Police, another statement of the Respondent No. 2 was recorded in which she alleged the offences U/s. 376 of IPC and U/s. 4, 8, and 12 of the POCSO Act against our son i.e., Petitioner.

C. Be that as it may, we wish to state that since the past 7 months, the Petitioner and the Respondent No. 2 are living together happily as husband and wife in our own house. There is no complaint either of the Respondent No. 2 against us or our complaint against Respondent No. 2.

D. We further state that we are living happily as one family under one roof since the past 7 months and we intend to do so in the coming future. We acknowledge that, the Respondent No. 2 is the lawfully wedded wife of our son and we have no hesitation in accepting their relationship.

E. We further undertake before this Court to treat the Respondent No. 2 fairly and diligently in accordance with all the rights and customs which are prevalent in our community in the future.

F. We also undertake that in the future we will protect the interests of the Respondent No. 2 and in case of any misunderstanding between Petitioner and Respondent No. 2, we shall always make endeavor to solve the differences between them mutually.

G. It is our humble undertaking before this Court that Respondent No. 2 shall be treated fairly at all the times during her stay in our house.”

9. The main reason for filing of the FIR appears to be matrimonial dispute, which the parties have resolved now. The allegations are totally of personal in nature. In view of the settlement between the parties, Respondent No.2 is not going to support the

prosecution case and therefore, possibility of conviction is remote and bleak. Nothing fruitful will therefore come out of the prosecution in question. Apart from it, if the criminal case in question is not quashed, the settlement arrived at between the parties would be disrupted. Considering these facts and circumstances, the petition deserves to be allowed. Hence, Writ Petition is allowed in terms of prayer clause (a), which reads thus.

“a) This Hon’ble Court by invoking powers under Art.226 of Constitution of India r.w. inherent powers U/s. 482 of the Cr.P.C. may issue appropriate Writ, Order and/or direction and quash and set aside the impugned FIR in C.R. No.0904/2020 registered with Vijapur Naka police station and subsequently all proceedings arising therefrom qua the Petitioner and quashing and set aside chargesheet bearing 432/2021 in Spl.Case No.316/2021 and all the proceeding arising out of said case.”

10. Writ Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)