

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO. 2094 OF 2021**

Mohammed Illyas Usman Ali Shaikh.

...Petitioner.

Versus

The State of Maharashtra & Others.

..Respondents.

Mr. Vivek Shukla i/b Devendra Shukla for the Petitioner.

Mr. J. P. Yagnik, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &  
ANIL S. KILOR, JJ.

Date : **January 7, 2022.**  
[Video Conferencing Mode]

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner and learned APP for the Respondent-State. Respondent No. 2 is present before this Court by virtual mode.
2. The Petitioner is before this Court seeking quashment of the first information report (FIR), bearing Crime No.278 of 2020 dated 9<sup>th</sup> March 2020 registered with Mumbra Police Station for the offences punishable under sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860.
3. Learned counsel appearing on behalf of the Petitioner submitted that during the pendency of petition, the parties have decided to part their ways by a mutual divorce. Our attention was invited to the affidavits filed on behalf of the parties. In the affidavit filed on behalf of

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the Petitioner, dated 11<sup>th</sup> June 2021, there is a reference to various terms agreed between the parties, including the providing of certain properties to Respondent No.2 as a gift under a gift-deed. Though the gift-deed is not registered document, Respondent No.2 who is present before this Court by virtual mode, on a query made to her, submitted that the terms referred to in the affidavit are agreed to by her and her agreement is a result of free will. An affidavit is also filed at the instance of Respondent No.2, dated 18<sup>th</sup> May 2021. It is stated by in Khulanama that Respondent No.2 and the Petitioner agreed that on and from the date of Khulanama, the children will reside with Respondent No.2 and their expenses will be entirely borne by Respondent No.2. The said document "Khulanama" is an annexure to the affidavit filed at the instance of Respondent No.2.

. It is specifically stated in the Khulanama that the parties have settled their claims and counter-claims. It is stated by Respondent No.2 that she shall withdraw all the complaints, claims and allegations filed against her husband and his family members and if the same is not withdrawn immediately, the same ceases to exist and stand deemed to be withdrawn upon execution of the Khulanama. It is then stated in the Khulanama that she shall withdraw the FIR by her against the husband and other family members and shall file her consent for quashment of the FIR by mutual consent and shall also personally appear before the Court for that purpose as and when required.

4. It may not be out of place to state that the above referred statement / undertaking given in the khulanama is fully complied with by Respondent No.2 by remaining present before this Court today on virtual mode.

5. As the parties have decided to part their ways on a amicable settlement and Respondent No.2 has made a specific statement that she is withdrawing her all claims, allegations and complaints against the Petitioner and her family members, the continuation of any proceeding pursuant to the subject FIR lodged at the instance of Respondent No. 2 against the Petitioners would be only an empty formality and asking the Petitioners to face the trial arising out of the said FIR would nothing but a futile exercise.

6. Considering all these aspects as well as the judgment of the Apex Court in the case of in B. S. Joshi vs. State of Haryana reported [AIR 2003 SC 1386] and decision of the Full Bench of this Court in Abasaheb Yadav Honmane vs. State of Maharashtra [2008(5) LJ.Soft 46], we are of the view that this is a fit case for quashment of FIR.

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in

view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the FIR alive, except ultimately burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the afore-stated fact-situation, the continuation of prosecution of the Petitioners in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the subject FIR, in order to secure the ends of justice.

8. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the FIR in question.

9. Accordingly, petition is allowed in terms of prayer clause (A). No order as to costs.

10. The affidavits filed in this Court on behalf of the Petitioner as well as Respondent No.2 shall be treated as undertakings given to this Court and the parties will abide by the terms stated in those affidavits.

**[Anil S. Kilor, J.]**

**[Prasanna B. Varale, J.]**