

Digitally
signed by
DINESH
SADANAND
SHERLA
Date:
2022.07.04
17:25:31
+0500

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2108 OF 2022

Amit N. Momaya and anr. ... Petitioners
V/s.
The State of Maharashtra and anr. ... Respondents

Ms Dhruvika Bhayani i/b KVT Legal for the Petitioner.
Mr. K.V. Saste, APP for the Respondent No.1 – State.
Mr. Uttam S. Rane for the Respondent No.2.

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

DATE : 29 JUNE 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.316 of 2012 (hereinafter referred to as “FIR”, for short) dated 3 November 2012 registered at Ghatkopar Police Station, Mumbai for the offences punishable under Sections 498-A and 406 read with 34 of Indian Penal Code.

2. The aforesaid crime came to be registered at the instance of Respondent No.2, who has alleged that she was subjected to mental and physical cruelty at the hands of her husband/ Petitioner No.1

and mother-in-law/Petitioner No.2.

3. The learned Counsel for the Petitioners and the Respondent No.2 jointly submit that the parties have amicably settled the dispute. It is submitted that the parties have filed the consent terms in the petition filed for divorce before the Family Court at Bandra and the learned Family Court on the basis of consent terms allowed the petition for divorce. 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 submits that 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.

4. Respondent No.2 has filed consent affidavit dated 23 June 2022. Respondent No.2 has stated that pursuant to amicable settlement, the Petitioner No.1 has paid the amount of Rs.2000000 to her towards permanent alimony. It is stated that she is allowed to retain the custody of their daughter 'Shivani'. 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.

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

1 (2012) 10 SCC 303

“But 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 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. The main reason for filing of the FIR appears to be matrimonial discord. The allegations are totally of personal 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 FIR 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, the Petition is allowed in terms of prayer clause (a), which reads thus:

“a) That this Hon’ble Court be pleased to invoke its inherent powers u/s. 482 CrPC, issue appropriate orders and/or, directions, to quash and set aside the aforesaid FIR No.316/2012 (filed u/s.498A, 406 & 34 of the IPC with the Respondent No.1’s Ghatkopar Police Station), the Chargesheet filed thereto and the consequent Criminal Case No. 4900255/PW/2013 (pending before the Hon’ble Metropolitan Magistrate’s 49th Court, Vikhroli, Mumbai);”

7. The Petition is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)