

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3843 OF 2021

Vickey Pande & Ors.

...Petitioners

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Ashwin Shete with Mr. Abhay Dhadiwal and Ms Divya Tragi i/b. M/s. Jaykar and Partners for the Petitioners.

Mr. Ankit Tiwari i/b. Mr. U.B. Tiwari for Respondent No.2

Ms S.D. Shinde, APP for Respondent -State.

CORAM : PRASANNA B. VARALE &

ANIL S. KILOR, JJ.

DATED: 4th FEBRUARY, 2022.

P.C.:-

1. Heard Mr. Ashwin Shete, learned counsel for the Petitioners, Ms S.D. Shinde, learned APP for the Respondent No.1-State and Mr. Ankit Tiwari for Respondent No.2.

2. Learned counsel for the Petitioners at the outset submitted that at the time of filing of the petition, the Petitioner No.1 is shown as a resident of Kopergaon, District -Ahmednagar. Subsequent to filing of the petition, the Petitioner No.1 shifted to foreign country for his further studies and presently he is pursuing his academic career in Canada. This

fact is stated in paragraph No.1 of the petition.

3. Learned counsel for the Petitioner further submits that subsequent to filing of the petition, the investigating agency completed the exercise of investigation and filed charge sheet and as per the oral instruction of learned counsel for the Petitioners, charge sheet is filed before the competent court of jurisdiction being I-81 of 2021 and in the said charge sheet the Petitioner No.1 is shown as absconding accused whereas Petitioner Nos.2 and 3 are shown as the accused against whom the prosecution would be launched.

4. Learned counsel for the Petitioner orally prayed for amendment to the petition and submits that the Petitioner would place on record copy of the charge sheet and incorporate the necessary grounds along with consequential prayers. It is thus submitted by learned counsel appearing for the Petitioner as well as for Respondent No.2 that after filing the FIR at Tilak Nagar Police Station, a parallel proceeding was initiated at the instance of Respondent No.2 in the nature of H.M.P petition. The learned counsel for the Petitioners and Respondent No.2 then invited our attention to the copy of the document under caption 'settlement -cum- compromise terms' at Exhibit-'B' at page 34 of the

petition to submit that due to intervention of elderly persons of the family, parties have decided to resolve their dispute amicably. Parties have also decided to part their ways peacefully and accordingly sought for decree of divorce by mutual consent and on instructions, submitted to this Court that on 02/12/2021 a decree of divorce was passed by the competent court of jurisdiction. In the requisite proceedings the Respondent No.2 has filed an affidavit in support of the settlement terms. It is stated in the settlement terms that during the pendency of the petition the Petitioner and Respondent without any force, coercion and with mutual understanding pursuing their future life and have amicably decided to resolve their dispute and arrive at terms. The terms include handing over of an amount of Rs.8,00,000/- by the Petitioner No.1-Vicky Satish Pande, who is referred to as Respondent in the said 'settlement -cum-compromise terms'. There is a reference made of handing over of articles. It is also stated in the compromise terms that the Respondent No.2 i.e. the Petitioner in the compromise term will withdraw the matrimonial proceedings filed by her against Respondent and also withdraw criminal proceedings, on the basis of which Crime No.57 of 2021 came to be registered at Tilak Nagar Police Station, Dombivali against Petitioner No.1 and his family members. It is also stated in the terms of settlement-cum-compromise terms that the parties would not claim any right against any

movable or immovable property of each other or their family members and assist each other prudently in order to withdraw the relevant proceedings filed by them against each other without undue delay, obstruction and additional demands.

5. In the affidavit, Respondent No.2 reiterates that in pursuant to the mediation and advice of well-wishers and elders, she is recording her no objection to dispose of the petition as parties have settled their dispute amicably by accepting the terms of settlement i.e. consent terms place on record at Exhibit-'B'.

6. Considering all these facts, we are of the opinion that no fruitful purpose would be served by keeping the proceedings in continuation and such continuation would be nothing but an act of futility.

7. At this juncture, it would be apposite to refer to the decision of Apex Court in *B. S. Joshi vs. State of Haryana reported [AIR 2003 SC 1386]*, wherein the Apex Court has held that in the event of settlement of matrimonial dispute, the FIR under Section 498A of IPC can be quashed, even though the said offence is not compoundable in terms of Section 320

of the Cr.P.C. Similar view has been taken by the Full Bench of this Court in *Abasaheb Yadav Honmane vs. State of Maharashtra*[2008(5) LJ.Soft 46].

8. 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.

9. 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 criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of the Applicants 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 FIR and proceeding in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will

be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

10. 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 criminal proceedings in question. The petition is accordingly allowed. The FIR No.57 of 2021 registered at Tilak Nagar Police Station and the proceedings arising out of the said FIR bearing charge-sheet no.I-81 of 2021 are quashed and set aside.

11. The petition stands disposed of accordingly.

12. Learned counsel for the Petitioner submits that the learned J.M.F.C., Kalyan, may be directed not to insist upon presence of Petitioner No.1 and Petitioner Nos.2 and 3, who are referred to as accused persons in the charge for the justifiable reasons viz. Petitioner No.1 is now pursuing his academic career in a foreign country and the Petitioner Nos.2 and 3 are in their advanced age viz. 60 and 69 years of age respectively and are residing at Kopargaon, District-Ahmednagar. Learned counsel for the Petitioners as such submits that a representative of the Petitioners or

the associate of the learned counsel for the Petitioners be permitted to collect the copy of the charge-sheet without an insistence of the personal presence of the Petitioner Nos.1 to 3.

13. Learned counsel for the Petitioner is permitted to submit such application before the J.M.F.C., Kalyan. In case such application is submitted to the Court, the Court may pass appropriate orders considering the fact that the Petitioner Nos.1 to 3 are facing the difficulties for their physical attendance and accordingly allow the representative /associate/counsel of the Petitioners to collect the copy of the charge sheet so as to place the same on record of this Court.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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