

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

CRIMINAL APPLICATION NO. 1098 OF 2022

1. Abhijit Jankidas Rathi
Age: 40 years, Occ: Service,
R/at: A-202, Clove Glove, Chikuwadi,
Borivali (W), Mumbai – 400 092.

2. Jankidas Gangabisan Rathi
Age: 68 years, Occ: Business

3. Laxmi Jankidas Rathi
Age: 62 years, Occ: Business

4. Ambarish Jankidas Rathi
Age: 41 years, Occ: Business

Residing at C/13, Suniti CHS,
Behind Chitra Mandir Theater,
Vavare Lane, Nashik – 422 001.

... Applicants

Versus

1. State of Maharashtra
(Through Senior Inspector of Police,
Borivali Police Station, Mumbai)

2. Nidhi Abhijit Rathi
Nee Nidhi Satish Rathi
Age: 37 years, Occ: Housewife
Having Address at
C/504, Prathamesh Horizon,
Above Sayali Hospital,
New Link Road, Borivali (W),
Mumbai.

... Respondents

Maitreyi Kale a/w Paresh Chandiramani i/by Harshavardhan G. Khambete for the Applicants.

Mr. Suyash Gadre for the Respondent No.2.

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

***CORAM: REVATI MOHITE DERE &
R. N. LADDHA, JJ.***

DATE : 18th NOVEMBER, 2022

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. By this application, under Section 482 of the Code of Criminal Procedure, 1973, the Applicants seek the quashing of the FIR registered vide C.R. No. 1128 of 2021 registered against them with the Borivali Police Station, Mumbai, at the instance of Respondent No.2, for the offences punishable under Sections 406, 323 504, 498A read with 34 of the Indian Penal Code. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. Perused the papers. Applicant No.1 is the husband of Respondent No.2, and Applicant Nos.2 and 3 are the in-laws. Applicant No.4 is the brother-in-law of Respondent No.2. Applicant No.1 got married to Respondent No.2 on 18 November 2011 as per the Hindu rites and rituals. Post marriage, Respondent No.2 has alleged harassment and ill-treatment by the Applicants, pursuant to which she lodged the aforesaid FIR against the Applicants.

5. After investigation, a charge-sheet was filed and the said case is pending before the 26th Metropolitan Magistrate Court at Borivali, Mumbai, being C.C. No. 3516/PW/2022. Apart from the said proceedings, Respondent No.2 had also filed DV proceedings against the Applicants, before the 26th Metropolitan Magistrate Court at Borivali, Mumbai, being Case No. DV/344/2017 and Divorce Petition before the Family Court at Bandra, Mumbai, being Petition No. A-2463 of 2017.

6. During the pendency of the proceedings above, the parties

amicably settled their dispute.

7. It appears that pursuant to the mediation, the parties entered into consent terms in the proceedings before the Family Court at Bandra, Mumbai, in Petition No. A-2463 of 2017. The said consent terms are on page no. 80 of the Application. As per the consent terms, Applicant No.1 agreed to pay a sum of Rs.55,00,000/- to Respondent No.2 by way of a full and final settlement. In the said consent terms, it is also stated that Applicant No.1 will clear the entire outstanding loan of the property which was jointly owned by Applicant No.1 and Respondent No.2 and that he will transfer his share of the joint ownership property, in the name of Respondent No.2 by way of gift deed or any other instruments/documents. As per the consent terms, Respondent No.2 was to give her no objection to the quashing of the C.R. above/proceedings. Respondent No.2 also undertook to withdraw the Domestic Violence case instituted by her.

8. Learned counsel for Respondent No.2 has tendered an affidavit of Respondent No.2 dated 10th November 2022 duly affirmed before the Notary. A photocopy of the Aadhar Card of Respondent No.2, duly attested by her, is annexed as Exhibit 'A' on page no. 18 of the Application. In the said affidavit, Respondent No.2 has given her no objection to quashing of the aforesaid C.R./proceedings. Respondent No.2 is present in person. On being questioned, she reiterates what is stated by her in the affidavit. The affidavit of Respondent No.2 and the photocopy of the Aadhar Card is taken on record. Respondent No.2 has been identified by her counsel and the learned APP has verified the original Aadhar Card.

9. The learned APP for Respondent No.1 submits that appropriate orders may be passed.

10. The dispute being matrimonial, is a private dispute and in view of the above referred facts and the judicial pronouncements of the Apex Court in this regard and in *Gian Singh v/s. State of*

Punjab & Anr¹ and Narinder Singh & Ors. v/s. State of Punjab & Anr.², we see no impediment in allowing the petition. The petition in terms of prayer clauses (a) and (b), which read thus :-

“a. That the Hon’ble Court be pleased to quash and set aside the FIR No. 1128 of 2021 registered by Borivali Police Station, Mumbai annexed hereinabove as Exhibit ‘B’ as preferred by the Respondent No.2 against the Applicants as under Sections 406, 323, 504, 498A, 34 of the Indian Penal Code.

b. That the Hon’ble Court be pleased to quash and set aside the charge-sheet that has come to be filed pertaining to the said FIR bearing FIR No. 1128 of 2021 registered by Borivali Police Station, Mumbai.”

11. Rule is made absolute. There shall be no order for costs.

12. All concerned are to act on the authenticated copy of this order.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.

BIPIN
DHARMENDER
PRITHIANI

Digitally signed by BIPIN
DHARMENDER
PRITHIANI
Date: 2022.11.29
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1 (2012) 10 SCC 303
2 (2014) 6 SCC 466