

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

CRIMINAL APPLICATION NO. 510 OF 2023

Mr. Bharat Amrutlal Nandu and Ors. ..Applicants
V/s.

The State of Maharashtra and Anr. ..Respondents

Ms. Sheetal Pandya a/w Ameet Mehta, Kiran Choudhary i/b
Solicis Lex for the Applicants.

Mr. Nilesh Gala a/w Manish Gala, Mr. Minil Shah i/b Law Square
for Respondent No.2.

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

**CORAM : ABHAY AHUJA, AND
M.M.SATHAYE, JJ.**

**DATE : 24th MAY 2023
(VACATION COURT)**

P.C.

1. Rule. Rule is made returnable forthwith. Learned APP waives service for Respondent No.1. Learned counsel for Respondent No.2 waives service. Taken up for final hearing by consent of parties.

2. By this application filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.'), the Applicants are praying to quash and set aside FIR No. 458 of 2022 filed against them by Respondent No.2 with Marine Drive Police Station for offences

**SNEHA
NITIN
CHAVAN**

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2023.05.25
12:58:46 +0530

punishable under Sections 498-A, 323, 504, 406 read with Section 34 of the Indian Penal Code ('IPC').

3. Perusal of the FIR dated 08.06.2022 shows that Respondent No.2 wife has filed the same against the Petitioners who are husband, father-in-law, mother-in-law and brother-in-law of Respondent No.2. Petitioner No.1 and Respondent No.2 are husband and wife and their marriage was solemnized way back on 03.03.2002. The couple has a son and a daughter. It is alleged by Respondent No.2 that in the year 2019, she came to know that Petitioner No.1/husband has an extra-marital affair and around that time, the in-laws started demanding a car as well as gold from the parents of Respondent No.2.

4. It appears that during the pendency of the present dispute, the parties have amicably settled the matter and the consent terms are filed in a domestic violence case in the Trial Court. Respondent No.2 has also filed consent affidavit affirmed on 12.05.2023 in this matter, clearly stating therein that she has withdrawn the domestic violence case by filing consent terms and has agreed to seek as well as give divorce by mutual consent to Petitioner No.1 against full and final settlement by way of permanent alimony amount of Rs.1 crore in four installments. It is stated by Respondent No.2 that after mutual discussion between the parties, they have amicably settled according to the

Consent Terms dated 29.04.2023 (copy produced on record in this matter) and as per the terms therein, she has decided to withdraw all allegations made in the impugned FIR. Respondent No.2 has proceeded to give clear no objection and consent for quashing of the impugned FIR in her said affidavit. Respondent No.2 has also clearly stated that she agrees to withdraw all complaints and other litigation filed by her against the Petitioners.

5. Today all the Petitioners and Respondent No.2 are present in Court personally and they are identified by their respective advocates, who have confirmed the aforesaid fact of amicable settlement.

6. By order dated 22.05.2023, we had sent this matter to the learned Registrar (Judicial) of this Court for verification of Consent Terms as well as affidavit of Respondent No.2 and make a report. The Registrar (Judicial) has filed a report dated 22.05.2023, which reads as below:

“The Hon’ble Court (Coram: Abhay Ahuja and M.M.Sathaye, JJ.) vide order dated 22 May 2023 in Criminal Application No. 510 of 2023 is pleased to direct the Registrar (Judicial) to verify the Consent Terms as well as affidavit of respondent no. 2 and make a report to the Hon’ble Court.

I am to state that in response to the directions by the Hon'ble Court, the Petitioners and Respondent No. 2 have marked their presence before the undersigned.

The Petitioners are identified by their advocate Ms. Sheetal Pandya and Respondent No. 2 is identified by her advocate Mr. Minil Shah.

The consent terms are read over and explained to the parties. They have admitted the recitals therein. On query, they have submitted that no force or fraud is played upon them. They have voluntarily signed the consent terms.

It is submitted that in the consent terms there is reference in paragraph No. 12 that the present respondent No. 2 shall cause her son Smit Bharat Nandu to execute declaration waving of rights in the immovable property of the petitioner. However, on query the Learned Advocate for the petitioner told that son Smit Bharat Nandu has attained majority and separate affidavit to that effect has been executed.

It is further noticed that in paragraph 17 of the consent terms, the applicant undertook to withdraw all complaints and allegations against Mr. Mehul Nandu, Chartered Accountant, who is not party to the proceeding. To put it differently, this paragraph No. 12 is an undertaking in respect of person who is not party to the proceeding.

In turn, the report is submitted for kind perusal and consideration of the Hon'ble Court."

7. Considering the aforesaid facts and circumstances, it is clear that underlying dispute between the parties is matrimonial which is private and personal in nature. The said dispute is now amicably resolved. We are therefore, of the considered view that if the settlement is allowed and the impugned FIR is quashed, no

public policy will be offended. Even otherwise, since Respondent No.2 complainant has settled the matter and has filed the consent affidavit and consent terms, it will be a case of unwilling witness/prosecutrix and as such, even if the trial is permitted, the same will be an exercise in futility. Therefore, taking appropriate guidance from the decision of the Hon'ble Supreme Court in the case of ***Gian Singh v/s. State of Punjab and Anr.***¹ we deem it appropriate to allow this application and pass following order:

ORDER

(i) Criminal Application is allowed in terms of prayer clause (b), which reads thus:

“(b) This Hon’ble Court may be pleased to allow the above Application to quash the FIR No. 458/2022 of Marine Drive Police Station, Mumbai registered against the Applicant for offence under Section 498-A, 323, 504, 406 and 34 of Indian Penal Code.”

(ii) No order as to costs.

(M.M.SATHAYE, J.)

(ABHAY AHUJA, J.)

¹ (2012) 10 SCC 303