

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5417 OF 2019

Mohammad Rafique Ansar Shaikh
r/at: Room No.8, Chawl No.9/F,
Matunga Labour Camp,
L.H.Road, Matunga
Mumbai 400 019.

... Petitioner/
Orig. Accused No.1

Versus

The State of Maharashtra
(Through Shahu Nagar Police Station)

2. Mumtazunnisa Mohammed Rafiqu Shaikh
r/at: Room No.8, Chawl No.9/F,
Matunga Labour Camp,
L.H.Road, Matunga
Mumbai 400 019.

... Respondents.

...

Mr M. Imran Farooqui for the petitioner.

Smt. G P Mulekar, APP for the State.
Ms. Neelam Ghorpade for respondent No.2.
Respondent No.2 in-person present in Court.

...

***CORAM : NITIN W SAMBRE &
R. N. LADDHA, JJ.***

DATE : 18th January 2023.

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Judgment (Per R. N. Laddha, J.) :

Heard learned Counsel, for the parties.

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

3. By this petition, the petitioner seeks to quash FIR No.82 of 2002 lodged with Shahu Nagar Police Station, Mumbai, at the instance of Respondent No.2/original Complainant for the alleged offences punishable under Sections 498-A, 406 r/w 34 of the Indian Penal Code. Quashing is sought on the premise that the parties have amicably settled their dispute and that Respondent No.2 has no objection to the quashing of the same.

4. Perused the papers. Petitioner in this petition is the husband of Respondent No.2. It reveals from the record that Petitioner got married to Respondent No.2 on 14.2.2000 as per Muslim rites and customs. After marriage, Respondent No.2 started residing at her matrimonial home with the Petitioner. Post marriage, Respondent No.2 has alleged harassment and ill-treatment by the Petitioner and his relatives, pursuant to which she lodged the FIR above against them.

5. When this petition for quashing the impugned FIR was placed before us, it was stated by the learned Counsel for the Petitioner and Respondent No.2-original Complainant, that the dispute, which was a purely domestic dispute, has been amicably settled. They, in unison, submitted that after the registration of the impugned FIR, Petitioner and Respondent No.2 were blessed with four children and are residing together happily. They submitted that pursuant to the registration of the CR, a charge sheet came to be filed against the parents and relatives of the Petitioner. After the conclusion of the trial, the learned Additional Chief Metropolitan Magistrate, 9th Court, Bandra, on 30th August 2005, acquitted the parents and relatives of the Petitioner.

6. It revealed from the record that at that time the Petitioner was shown as an absconded accused. Learned Counsel for the Petitioner and Respondent No.2 jointly submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. They submitted that Respondent No.2, in this petition, has also filed the Consent Affidavit dated 14th October 2019. They submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in *Gian Singh Vs. State of Punjab & Anr.*¹ And *Narinder Singh & Ors. Vs. State of Punjab & Anr.*²

1 (2012)10 SCC 303

2 (2014) 6 SCC 466

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

8. We have examined the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the cases of ***Gian Singh and Narinder Singh (Supra)***. The FIR arising from purely domestic dispute can be quashed by consent in light of the decision of the Hon'ble Supreme Court in ***Gian Singh (Supra)***, more particularly in light of the following observations;

“ But the criminal cases having overwhelmingly and predominantly civil flavour stand on 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 matrimonial 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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.”

(emphasis supplied)

9. Upon perusal of the record, it appears that the main reason for the filing of the FIR is a matrimonial dispute. The allegations are personal. Given the settlement between the parties,

Respondent No.2 will not support the prosecution case. The accusation would be flawed, and allowing criminal prosecution to continue would be an abuse of the process of the Court. It will also disrupt the compromise and interfere with the restoration of peace. Nothing fruitful will, therefore, come out of the prosecution in question. The parties wish to put their past behind. Moreover, after registration of the crime against the Petitioner, the Petitioner and Respondent No.2 were blessed with four children. If the FIR is not quashed, the entire family will remain embroiled in litigation and prosecution, which will not serve the interest of justice. The dispute also does not have any ramifications on Society at large. Respondent No.2 is present before the Court and stated that she has no objection if the impugned FIR against the Petitioner is quashed, given the settlement between them. On questioning, she reiterates what was stated by her in the affidavit. Respondent No.2 has been identified by her Counsel. Learned APP has verified the original Aadhar Card of Respondent No.2.

10. Considering these facts and circumstances, we see no difficulty in quashing the FIR. The criminal writ petition, therefore, is made absolute in terms of prayer clause (a), which reads thus:

“a. That this Hon’ble Court be pleased to quash FIR No.82/2002 dated 28/06/2002, registered at Shahu Nagar Police Station against Petitioner for the offences punishable

u/s. 498-A,406 r/w.34 of the IPC.”

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

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

Lata S Panjwani, P.S.