

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 464 OF 2012**

Dinesh Mangilal and Anr.

.. Applicants

Versus

The State of Maharashtra & Anr.

.. Respondents

Mr. Amol Patankar, Advocate for the Applicants.

Mr. Amit A. Palkar, APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****RESERVED ON : 11th DECEMBER, 2023.
PRONOUNCED ON : 24th JANUARY, 2024.****JUDGMENT [PER: SHYAM C. CHANDAK, J.]**

1) Present application is filed under Section 482 of the Code of Criminal Procedure, 1908, seeking to quash the FIR bearing C.R.No.170 of 2000 registered with the Respondent No.1-N.M.Joshi Marg Police Station, Mumbai for the offences punishable under Section 326, 457, 506 (II) r/w. Section 34 of the Indian Penal Code and now pending before the learned Metropolitan Magistrate 29th Court at Bhoiwada, Dadar, Mumbai as C.C.No. 394/PW/2005

2) Heard Shri.Amol Patankar, learned Advocate for Applicants and Mr. Ameet Palkar APP for the State. Perused the record.

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3) The record shows that, Rule was issued on 14 June 2012. By an Order dated 31st August 2015, an interim relief in terms of prayer clause (c) was granted and proceedings in the said case were stayed.

3.1) As noted in the Order dated 12th December, 2012 the Respondent No.2 is represented by Mr.Kartik S. Iyer Advocate. However, none appeared for the Respondent No.2 when the Application was taken up for hearing.

4) In brief, the facts giving rise to this application are as under:

4.1) That, Noble Tower, situated at Veer Santaji Lane, Ganpatrao Kadam Marg, Mumbai was constructed by the Company of the Respondent No.2. The first and second floor in the tower were for commercial use and third to sixth floors were for residential purpose. The 3rd floor was first sold to the Applicants. Then, half of the 4th floor was also purchased by the Applicants. Thereafter at the request of the Applicants, the Respondent No.2 gave keys of the said flats to the Applicants for doing furnishing work there. The Applicants had also purchased half of the first floor; however, they were informed that, giving possession of that half part was not possible due to a matter was pending in the High Court. In the meantime, the Respondent No.2 went abroad. However, behind his back, the Applicants started using the 3rd and 4th floor flats for commercial purpose which was contrary to the

terms and conditions of the relevant Agreement and the Bombay Municipal Corporation Act. Hence, a legal notice was issued requesting the Applicants to refrain from said illegal use of the flats and to stop storing of hazardous material in front of the lift door. The matter was also reported to the police and the Corporation. Thereafter, there were disputes between the parties for one or other reason. Said disputes were related to said flats.

4.2) On 30 July 2000, the Respondent No.2 received a telephonic message at his residence that, the Applicants with six others threatened his watchman with severe beating and they broke the telephone line. One security person also telephonically informed the Respondent No.2 about the forcible entry of the Applicants and that they have put grills and some baggage in the premises. Hence the Respondent No.2 along with his son went to the spot. The Applicants were present there. The Applicant No.2 was having thick stick in his hand and he tried to hit the Respondent No.2 on his head. The Respondent No.2 warded off that blow with his left hand. As a result, he sustained a fracture to the finger of his left hand. The Applicant No.1 assaulted the son of the Respondent No.2 using thick object. Then the Applicants and others fled from the spot. While running, the Applicant No.2 tripped on the stair case and sustained injury. Immediately, the police were called. Police referred the Respondent No.2 and his injured son to K.E.M.

hospital for treatment. Then, the Respondent No.2 lodged the report under which the impugned F.I.R. came to be registered against the Applicants. The investigation culminated into filing of chargesheet, which came to be registered as CC.No./394/PW/2005.

5) Learned Advocate for the Applicants submitted that, at the relevant time, the Applicants had also filed a counter F.I.R. bearing Cr.No.169/2000 against the Respondent No.2 for the offences under Sections of 506 (II), 341, 324, 504 read with 34 of the I.P.C. Around the same time, the Applicant No.1 filed a S.C.Suit No.4533/2000 against the Respondent No.2 and his company in the Bombay City Civil Court. One more suit bearing S.C.Suit No. 4534/2000 was filed by the partnership firm of the Applicants against the Respondent No.2 and his company in the same Court. Thereafter, arraying the same parties, the suits bearing No.1479/2001 and 1480/2001 were filed by the partnership firm of the Applicants and the Applicant No.1 respectively before this Court.

5.1) Learned Advocate for the Applicants submitted that, all the suits pertain to the same flats. After some years, the dispute between the parties was resolved and all the suits came to be amicably settled by filing the Consent Terms dated 27th April 2005, to that effect. Accordingly, the Decrees have been passed in Suit No.4533/2000 and Suit No. 4534/2000 by the

Bombay City Civil Court and the suits filed before this Court were withdrawn by the Applicants. The learned Advocate submitted that, as noted in the Consent Terms placed before the Bombay City Civil Court, the Applicants and Respondent No.2 had agreed to withdraw the complaints and criminal cases filed against each other in respect of the suit premises. Learned Advocate submitted that, by a letter bearing No.12830/2011, dated 11th October, 2011, under the Right to Information Act, N.M. Joshi Marg police informed that, 'C' Summary was filed in the Crime No.169 of 2000. The Respondent No.2, however, turned back from the settlement terms after getting its benefit.

5.2) Learned Advocate for the Applicants submitted that, once a party has availed certain benefits of the Consent Terms in one case, he is not allowed to turn back and take a different stand in the connected matter which was also a subject matter of the same Consent Terms and liable to be disposed of in view of said Consent Terms. Hence, the impugned F.I.R. and the consequent CC.No.394/PW/2005 are liable to be quashed. In support of the submissions, the learned counsel relied on the following decisions :

i) *Ruchi Agarwal Vs. Amit Kumar Agrawal & Ors.:2005 (3) SCC 299*. In this case, the appellant had filed a complaint alleging offence under Section 498A, 323, 506 IPC and under Sections 3 & 4 of Dowry Prohibition Act. The

High Court quashed the criminal complaint on the ground of territorial jurisdiction to the police station. As a result, the chargesheet and the summoning order of the Chief Judicial Magistrate, at Nainital were quashed and the investigation of the case was transferred to the concerned Police Station Bilaspur, District Rampur. The said complaint was filed on 10th April 2002. Thereafter the divorce petition was filed by the appellant before the Family Court at Nainital. In the said divorce petition a compromise was arrived at between the parties in which it was stated that the first respondent-husband was willing for consent divorce and that the appellant/wife had received all her *Stridhan* and maintenance in a lump sum. It is also stated in the said compromise deed that the parties to the proceeding would withdraw all civil and criminal complaints filed against each other which includes the criminal complaint filed by the appellant which was subject matter before the Hon'ble Supreme Court. The appellant gave her statement that, she wanted a divorce and that there is no dispute about any amount pending. Hence, the Family Court, Nainital granted a divorce. The appellant also withdrawn her complaint under Section 125 of the Cr.P.C. filed before the Family Court. However, the appellant did not take any steps to withdraw the complaint under Section 498-A etc. Hence, the respondent husband filed the proceeding to quash the same. However, before the Supreme Court the

appellant-wife took a stand that though she had signed the compromise deed, the same was obtained by the respondent husband and his family under threat and coercion and she did not receive the lump sum maintenance and her *Stridhan* properties. In the backdrop, Hon'ble Supreme Court observed that, pursuant to the compromise deed the Respondent/husband has given a consent divorce which the appellant wanted. Thus, he has performed his part of the obligation of the compromise deed. Even the appellant also performed her part of the obligation partially; withdrawing the criminal complaint under Section 125 of Cr.P.C. Therefore, and the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, it was observed that the conduct of the Appellant indicates that the criminal complaint under Section 498-A etc. was filed by the appellant against the respondent only to harass him. Hence the complaint was quashed.

ii) *Mohd. Shamim & Ors. Vs. Nahid Begum & Anr.:2005 All MR (Cri) 828 (S.C.)*. In this case, an amicable settlement was arrived at between the husband and wife during the hearing of the anticipatory bail application. As per the said settlement, the wife had agreed to accept a certain sum towards the dowry, *Mehar*, past, present and future maintenance of her. An affidavit in support of the settlement was also signed by her. Later on, the husband

filed an application under Section 482 of the Cr.PC. for quashing the F.I.R. registered against him and others under Section 406, 498A r/w. 34 of the I.P.C. The said application was opposed by the wife stating that she does not wish to compromise the matter and wants to continue with the said F.I.R. Therefore, the learned Single Judge of the High Court refused to interfere in the matter and dismissed the application. However, the Hon'ble Supreme Court noted that out of the settlement amount, Rs.2,25,000/- were paid to the wife. The balance of Rs.50,000/- was payable at the time of the complainant's making a statement and giving no objection for quashing the F.I.R. Said amount was retained in the Court as per the Court's direction. No dispute remained between the parties regarding the payment of dower amount (*Mehar*), dowry Articles etc. In this background, the Hon'ble Supreme Court noted that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge and it was a genuine settlement. Hence, the contention of the wife that she was not aware of the contents thereof and the said agreement as also her affidavit were signed by her due to misrepresentation of facts was rejected holding that the denial of the execution of said deed of settlement is an afterthought on the part of the wife.

iii) *Mrs.Usha Badri Poonawala vs. K.Kurien Babu & Anr.:2005 ALL MR*

(Cri) 2728. In this case, the oral evidence on record disclosed that the Memorandum of understanding was executed by the parties on 9th September 1997, under which the Respondent No.1 received a sum of Rs.3,76,896/-. He admitted the contents of the said document on oath. The Memorandum specifically recorded that irrespective of the claim made by the Respondent No.1 in the Criminal Complaint, money matters involved in the case have been settled amicably. After having agreed to settle the dispute amicably and after having agreed to withdraw the complaint, the Respondent No.1 wanted to prosecute the complaint only on the ground that, he was to receive something more than what is mentioned in the written Memorandum. This stand was taken nearly seven years after the execution of Memorandum. Hence, and considering the conduct of the Respondent No.1 it is held that, the continuation of the proceedings by him will amount to abuse of process of law and therefore, the complaint deserves to be quashed.

6) Learned APP submitted that, looking at the facts and circumstances of the case, appropriate Order may be passed in the interest of justice.

7) The Consent Terms filed in S.C.Suit No.4533/2000 and S.C.Suit No.4534/2000 are at 'Exhibit-A'. The Consent Terms filed in S.C.Suit

No.4533/2000 noted that, the Agreement dated 12th July, 1994 in respect of flat No.101 is cancelled. In lieu of the premises No.101, the defendants undertake to sale, transfer and convey to the plaintiff the premises No.203 in the building known as “Noble Tower” forthwith and further defendants undertake to handover vacant and peaceful possession of said premises No.203 within 3 months from the date of taking possession of the said premises No.101. Further, it was agreed between the parties that, the area to premises No.203 is less by about 240 Sq.ft of the area of the premises No.101. The defendants on/before execution of the Consent Terms paid to the plaintiff a sum of Rs.4,40,750/- being the difference of the deficit area. The part payment is made by cheque of Rs.3,50,000 dated 27th April 2005 and as regards the balance amount of Rs.90,750/-, the Plaintiff was entitled to withdraw the amount of Rs.90,750/- which he had deposited in this Court in Suit No.1480/2001. The Consent Terms also noted that, the parties agree and undertake to withdraw all police complaints and criminal cases filed against each other in respect of the suit premises being premises No.101. Further, it was agreed that, the parties agree and undertake to file Consent Terms in this Court for withdrawal of the Suit No.1480/2001 with liberty to the Plaintiff to withdraw the said amount of Rs.90,750/- from this Court.

8) The Consent Terms filed in S.C.Suit No.4534/2000 noted that,

the Agreement dated 12th July, 1994 in respect of flat No.102 is cancelled. In lieu of the premises No.102, the defendants undertake to sale, transfer and convey to the plaintiff the premises No.204 in the building known as “Noble Tower”, forthwith and further the defendants undertake to handover vacant and peaceful possession of the said premises No.204 within 3 months from the date of taking possession of the said premises No.102. Further, it was agreed between the parties that, the area to the premises No.204 is less by about 240 Sq.ft of area of the premises No.102. The defendants on/before execution of the Consent Terms paid to the plaintiff a sum of Rs.4,25,750/- being the difference of the deficit area. The part payment is made by cheque of Rs.3,50,000 dated 27th April 2005 and as regards the balance amount of Rs.75,750/-, the Plaintiffs were entitled to withdraw the amount of Rs.75,750/- which they had deposited in this Court in Suit No.1479/2001. The Consent Terms also noted that, the parties agree and undertake to withdraw all police complaints and criminal cases filed against each other in respect of the suit premises being premises No.102. Further, it was agreed that, the parties agree and undertake to file Consent Terms in this Court for withdrawal of Suit No.1479/2001 with liberty to the Plaintiffs to withdraw the said amount of Rs.90,750/- from this Court.

9) The Applicants have produced two separate Orders dated 13th

July 2005 passed by this Court in S.C.Suit No.1479/2001 and S.C.Suit No.1480/2001 respectively.

9.1) As per the Order dated 13 July 2005 passed by this Court in Suit No.1479/2001, the parties have amicably settled the matter out of the Court. It was agreed between the parties that the plaintiffs would withdraw the suit and the plaintiffs were permitted to withdraw the amount deposited by them being sum of Rs.75,750/-. Accordingly, 'Minutes of Order' signed by the parties were taken on record at 'Exhibit-X' and the suit was disposed of in terms of the 'Minutes of Order'.

9.2) As per the Order dated 13th July 2005 passed by this Court in Suit No. 1480/2001, the parties have amicably settled the matter out of the Court. It was agreed between the parties that the plaintiff would withdraw the suit and the plaintiff was permitted to withdraw the amount deposited by him in this Court being sum of Rs.90,750/-. Accordingly the 'Minutes of the Order' signed by both the parties were taken on record and marked as 'Exhibit-X' and the suit was disposed of in terms of the 'Minutes of Order'.

10) The learned Advocate for the Applicants made a statement that, in view of the Consent Terms at 'Exhibit-A', both the suits then pending before the Bombay City Civil Court came to be disposed of. The said Consent Terms have been duly signed by the Respondent No.2. From the statement of

learned counsel for the Respondent No.2, as noted in the Order of this Court dated 31st August, 2015, it can be safely inferred that, the fact of signing the Consent Terms by the Respondent No.2 is not disputed here.

11) The said Order dated 31st August, 2015 noted that, *prima facie* it appears that parties have agreed to withdraw criminal cases filed against each other. The Respondent No.2, however, has not given consent for quashing the subject F.I.R. on the ground that, the Consent Terms are not acted upon. This stand taken by the Respondent No.2 is very inconsistent to the Consent Terms produced on record (at 'Exhibit-A') and has been taken after a long time. The above statement on behalf of the Respondent No.2 was immediately disputed by learned counsel for the Applicants. Hence, this Court directed that, this Application will have to be argued on merit and adjourned the case at the request of learned counsel for the Respondent No.2. Nevertheless, the Respondent No.2 and/or his Advocate on record neither filed reply to this Application nor availed the hearing opportunity. The Consent Terms are duly signed by the Respondent No.2. Pursuant to the Consent Terms, the Applicants have withdrawn all the suits. This has benefited the Respondent No.2 as he got rid of the litigations without any contest. Hence, at such a belated stage and without contesting this Application, in our considered view, it is not proper on the part of the

Respondent No.2 to take a stand that, the Consent Terms are not acted upon. As a result, it is safe to infer that, the Consent Terms have been duly acted upon by the Applicants. However, with an oblique intention, the Respondent No.2 made a baseless claim that, the Consent Terms are not acted upon. Hence, the said claim is rejected.

12) In view of the above discussion, continuation of the impugned F.I.R. and the C.C.No. 394/PW/2005 would be abuse of process of law, hence, the same are liable to be quashed and accordingly, are quashed and set aside.

13) Criminal Application No.464 of 2012 is allowed in the above terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)