

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1395 OF 2020

- 1] Mr. Manoj Babanrao Sawalakhe]
Age-35 years, Occupation – Service]
Residing at Plot No.-72, Gajanan Dham,]
Khamala Road, Nagpur]..... Petitioner No.1.
- 2] Mrs. Sumanbai Babanrao Sawalakhe]
Age-63 years, occupation-Service]
Residing at Plot No.-72, Gajanan Dham,]
Khamala Road, Nagpur]..... Petitioner No.2.
- 3] Mr. Dhiraj Babanrao Sawalakhe]
Age-44 years, Occupation – Service]
Residing at Plot No.-72, Gajanan Dham,]
Khamala Road, Nagpur]..... Petitioner No.3.
- 4] Mr. Namdevrao Govind Shirbhate]
Age – 62 years, Occupation – Service]
Residing at Mukkam Post – Arvi,]
Rashtra Sant Tukdoji Ward,]
Vardha, Maharashtra]..... Petitioner No.4.

Versus

- 1] The State of Maharashtra]
Through Investigation Officer]
Koparkhairane Police Station,]
For the offence u/s Section 323,]
34, 420, 498A, 504, 506 of IPC]..... Respondent No.1.
- 2] Mrs. Sharayu Manoj Sawalakhe]
alias Ms. Sharayu Panchagde]
Age – 32 years, occupation – Service]
Residing at Flat No.404, Viraj Vihar CHS]
Sector No.2, Koparkhairane,]
Navi Mumbai – 400 709,]
District : Thane]..... Respondent No.2.

Ms. Amrita Manchanda for the Petitioners.
Dr. F R Shaikh, APP for the Respondent/State.
Ms. Sadika Chougule for Respondent No.2.
Mrs. Sarayu Manoj Sawalakhe – Respondent No.2 present through VC.

CORAM : S. S. SHINDE,
M. S. KARNIK, JJ
DATE : 27th NOVEMBER 2020

ORAL JUDGMENT (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties the petition is taken up for final disposal.

2 The learned counsel appearing for the Petitioners and the learned counsel appearing for the 2nd Respondent jointly submits that Petitioner No.1 and the 2nd Respondent have amicably settled the dispute, and the proceedings are instituted for divorce by mutual consent before the competent court.

3 It is submitted that the 2nd Respondent has filed an affidavit before this Court wherein it is stated that the impugned FIR may be quashed. The 2nd Respondent has stated in Paragraphs 3, 4 and 5 of the said Affidavit as under :-

“3 I say that, after the discussion among the families I have decided to withdraw of charges and also decided not to proceed with the matter against Petitioners and also considering the good behavior & future of both families, I have decided to give “No Objection” for quashing the FIR.

4. I(further say that, I have no objection to quash the FIR No.0448 of 2019 registered u/s. 323, 34, 420, 498A, 504 and 506 of IPC with Koparkhairane Police Station.

5. I am making this Affidavit for quashing the FIR No.0448 of 2019 registered at Koparkhairane Police Station without any coercion, pressure and undue influence and with full sound mind”

4 The 2nd Respondent is present. We have interacted with her through video conferencing. She stated that it is her voluntary act to enter into the said settlement and file her affidavit before this Court praying therein for quashing the impugned FIR.

5 Since the Petitioners and the 2nd Respondent have amicably settled the dispute and already proceedings have been instituted for

divorce by mutual consent, and even the affidavit has been filed by the 2nd Respondent before this Court wherein it is stated that she has no objection for quashing the impugned FIR, no purpose would be served by continuing further investigation/proceedings arising out of FIR No.0448 of 2019 dated 11/12/2019 registered by Koparkhairane Police Station, Navi Mumbai for the offences punishable under Sections 420, 34, 323, 504, 498A and 506 of the Indian Penal Code. Further continuation of the investigation/proceedings arising out of the impugned FIR would be exercised in futility.

6 The Supreme Court in the case of Giansingh v. State of Punjab and Another¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the

1 2012 (10) SCC 303

offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

7 In the light of discussion in foregoing paragraphs, in order to secure the ends of justice and prevent the further abuse of the process of the Court, the petition deserves to be allowed. Accordingly, the petition is allowed in terms of prayer clause (a). Rule made absolute on above terms. Writ Petition stands disposed of.

8 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

[M. S. KARNIK, J]

[S. S. SHINDE , J]