

(2021) 03 BOM CK 0036
In the Bombay High Court
Case No : Criminal Application No.233 Of 2021

Bilal Shaikkh Adam Hazu

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 31-03-2021

Acts Referred:

Indian Penal Code, 1860 — Section 354, 354(D), 500, 506(2), 509
Information Technology Act, 2000 — Section 67

Citation : (2021) 03 BOM CK 0036

Hon'ble Judges : S. S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : Ritesh Ratnam, V B Konde Deshmukh, Ateet Shirodkar, Rajeev Agarwal

Final Decision : Disposed Of

Judgement

S S Shinde, J

1 Rule. Rule made returnable forthwith and heard with the consent of the learned counsel appearing for the parties.

2 The Applicant has filed this Criminal Application for the following substantial relief :-

"(a) This Hon'ble Court be pleased to quash and set aside the C.R. No.161 of 2020 dated 27.11.2020 registered at Colaba Police Station, District Mumbai for offences punishable under sections 354, 354(D), 506(2), 509, 500 of the Indian Penal Code, 1860 and under Section 67 of the Information Technology Act.

3 The Applicant herein has been arraigned as an accused in the said CR No.161 of 2020 dated 27/11/2020 registered at Colaba Police Station, Mumbai for the offences punishable under sections 354, 354(D), 506(2), 509 and 500 of the Indian Penal Code and under Section 67 of the Information Technology Act at the instance of Respondent No.2 herein. It is submitted that the 2nd Respondent got acquainted with the Applicant five years prior to the alleged incident while she

was studying in the Elphinstone College. They used to meet each other regularly and developed an intimacy and love between them. Thereafter Applicant proposed the 2nd Respondent for marriage and, the 2nd Respondent gave her consent for the same. Thereafter the Applicant took the 2nd Respondent to one Hotel-Room at Panvel, and since the 2nd Respondent was in love with the Applicant, she has no reason to doubt about the intention of the Applicant and she allowed him to take some intimate photos of both from his mobile. When she enquired about the intention behind snapping such photos by the Applicant, she was told that he will delete the said photographs from the mobile. As the 2nd Respondent has faith in the Applicant, she did not enquire much about the same. It is alleged that when the 2nd Respondent started asking the Applicant about the marriage and further started insisting to meet his family members, the Applicant avoided the same on one pretext or the other, pursuant to which the quarrels started taking place between them. It is alleged that thereafter the Applicant started threatening the 2nd Respondent to him, however, the 2nd Respondent did not meet him and, further she stopped receiving calls of the Applicant. It is alleged that the Applicant started defaming the 2nd Respondent before her friends over phone by giving false and defamatory information in respect of the 2nd Respondent. The 2nd Respondent informed about the said harassment at the hands of the Applicant to her elder sister and brother in law. Thereafter her elder sister advised her not to meet the Applicant at all. It is further alleged that on 26/11/2020, the Applicant had kept the aforesaid intimate photographs of the 2nd Respondent and the Applicant on his mobile status. In view of this, as stated herein above, the 2nd Respondent has lodged the impugned FIR at Colaba Police Station against the Applicant.

4 After filing the impugned FIR, the Applicant came to be arrested on 30/11/2020 and was released on bail on 04/12/2020.

5 It is submitted by the learned counsel appearing for the parties that due to intervention of the family members and well wishers, the parties have settled their dispute amicably. The learned counsel appearing for the Applicant submits that, without entering upon the merits of the case, this Court may allow this Criminal Application on the basis of the settlement arrived at between the Applicant and the 2nd Respondent.

6 The learned counsel appearing for the 2nd Respondent submits that it is the voluntary act of the 2nd Respondent to arrive at settlement and give her consent for quashing the impugned FIR. He further submits that in support of the said settlement, the 2nd Respondent has also filed her affidavit in the Criminal Application.

7 The 2nd Respondent was present before this Court on 24/03/2021 when the matter was heard. She was identified by her advocate. When we interacted with her, she stated that she has filed her affidavit on her own will, without any coercion or pressure. It is stated therein that she has no objection to the prayer of the Applicant being granted. In paragraphs 3 to 8 of the affidavit of consent,

the 2nd Respondent has stated thus :-

"3 That I say that, the Applicant and Respondent No.2 were having a love affair and due to temperamental difference they have parted ways and the instant FIR came to be filed due to emotional outbursts and out of rage and anger.

4 That I further say that due to intervention of the senior family members of the Applicant and the Complainant and the well-wishers of the Applicant and the Complainant, the disputes between the Applicant and the answering Respondent No.2 has been settled amicably and they do not harbor any ill-feeling towards each other.

5 That I say that the instant C.R. is out-come of the emotional outbursts of the deponent and the parties have amicably resolved all the disputes between them. That the Applicant and Respondent No.2 are of young age and unmarried and want to move ahead in life without interfering in the life of each other. That the pendency of the said FIR will create hindrances in the smooth sailing of their life.

6 That I say that in view of the aforesaid settlement, no prejudice would be caused to any one if the instant F.I.R. is quashed.

7 That I say that on the contrary serious prejudice would be caused to the Applicant and Respondent No.2 if the instant F.I.R is not quashed.

8 That in view of the aforesaid submission made by the answering respondent in the instant reply affidavit, this Hon'ble Court may kindly be pleased to quash the F.I.R. bearing 161 of 2020 registered with Colaba Police Station dated 27.11.2020 u/s 354, 354(D), 506(2), 509, 500 of the Indian Penal Code, 1860 and u/s. 67 of Information and Technology Act."

8 Looking to the serious nature of allegations made against the Applicant in the impugned FIR, this Court by order dated 17/03/2021 directed the Applicant to file his undertaking, and it is made clear that, unless an undertaking is filed by the Applicant that the posts on whatsapp are deleted and the photographs of Respondent No.2 are returned to her and henceforth, the Applicant will not indulge into such activities, this Court will not entertain his prayer for quashing the FIR.

9 Pursuant to the directions given by this Court vide order dated 17/03/2021, the Applicant has filed his Affidavit-Cum-Undertaking dated 20/03/2021. In paragraphs 2 to 6 of his undertaking, the Applicant has stated thus :-

"2 That I say that in compliance of the order dated 17/03/2021 passed by this Hon'ble Court in captioned application, the Applicant has filed the instant affidavit-cum-undertaking.

3 That I say that after the registration of the instant F.I.R., the applicant was arrested and the mobile phone of the Applicant was seized by the Investigating Agency and all the alleged incriminating photographs have been deleted from the mobile phone by the Investigating Agency. That I further say that thereafter the

learned Magistrate vide its order dated 04/03/2021 was pleased to direct the investigating agency to return the aforesaid mobile phone to the Applicant. Annexed hereto and marked as Exhibit "1" is a copy of the order dated 04.03.2021.

4 That I further say that now the Applicant is not in possession of any photographs of the respondent No.2/Complainant in any form i.e. digital or hard copy.

5 That I further say that in future the Applicant will not, in any manner, disturb or interfere with the life of the respondent No.2/complainant.

6 That I further say that in future the Applicant will never indulge in any illegal and unlawful activities."

10 The learned counsel appearing for both the parties submit that both the parties have voluntarily agreed to settle the dispute and there is no coercion, undue influence or force upon them for arriving at the settlement. It is also submitted that both the parties have amicably resolved/settled the dispute and decided to seek quashing of impugned FIR by this Criminal Application. The 2nd Respondent has also filed the affidavit in support of the said settlement. The learned counsel appearing for the Applicant submitted that by filing undertaking, the Applicant has assured this Court that during the course of investigating, the investigating agency has deleted all the alleged incriminating photographs of the 2nd Respondent from his mobile, and that the Applicant will not in any manner, disturb or interfere with the life of 2nd Respondent and wil not indulge in any illegal and unlawful activities.

11 The Supreme Court in the case of Giansingh v. State of Punjab and Another 2012 (10) SCC 303 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 resolves 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 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.

12 In view of settlement arrived at between the parties, no fruitful purpose will be served by continuing the further investigation in the FIR being C R No.161 of 2020 registered at Colaba Police Station, Mumbai by the 2nd Respondent against

the Applicant for the offences punishable under Section 354, 354(D), 506(2), 509, 500 of IPC.

13 In the light of discussion in foregoing paragraphs, it is abundantly clear that Respondent No.2 is not going to support the allegations made against the Applicant in the impugned FIR. The further continuation of investigation in the impugned FIR being CR No.161 of 2021 would tantamount to abuse of the process of the Court. Since the 2nd Respondent by way of filing her affidavit has clearly stated that, she is not interested to pursue the allegations made in the impugned FIR, the chances of conviction of the Applicant would be bleak and remote.

14 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the concerned court, the Criminal Application deserves to be allowed and accordingly the same is allowed in terms of prayer clause (a). Rule is made absolute to the above extent and the Criminal Application stands disposed of accordingly.