

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

CRIMINAL WRIT PETITION NO. 845 OF 2015

Mohd. Jawad Mohd. Ali Razi & Ors.

..Petitioners

v/s.

The State of Maharashtra & Ors .

..Respondents

Mr. Prakash Israni for the petitioner.

Ms. Nita Bhatia a/w. Ms. Saah Kapadia for the Respondent No.2.

Mr. K.V.Saste, APP for the Respondent/State.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : MARCH 13, 2015.

P.C.

1. Heard learned Counsel for the petitioner. At the outset the petitioner seeks leave to delete the respondent no.3. Leave granted.

Necessary amendment to be carried out forthwith.

2. This petition is filed under Article 226 of the Constitution of India, 1950 r/w. the provisions of Section 482 of Cr.P.C. for quashing the proceeding of RCC No.403/PW/2003 pending on the file of the learned Addl. Chief Metropolitan Magistrate's 3rd Court at Esplanade,

Mumbai. Said case arises out of C.R.No. 29 of 2004 registered with Colaba Police Station against the petitioner at the instance of respondent no.2 for the offence punishable under Section 498A, 406 r/w. 34 IPC. The petitioner no.1 is the husband of the respondent no.2 and the rest of the petitioners are the family members of the petitioner no.1. The matrimonial dispute between the petitioner no.1 and the respondent no.2 gave rise to filing of the civil application as well as criminal proceeding. The above C.R. which is subject matter of the petition is one of the case.

3. The respondent no.2 also filed Criminal Case No.414/N/2007 against the petitioner for Domestic Violence Act before the Metropolitan Magistrate's 37th Court, Esplanade, Mumbai. Meanwhile, the parties arrived at compromise and filed consent terms in proceeding 414/N/2007. The consent terms are annexed at Exhibit B to the petition.

4. In para 18 of the said consent terms both the parties agreed and undertook to file consent terms in Case No.403/PW/2003 which is the subject matter of the present petition.

5. In terms of the said consent terms, the petitioner is approaching

this Court by aforesaid petition. The respondent no.2 has filed affidavit dated 12.3.2015. In paragraph 5 she has stated that she does not wish to prosecute the case no.403/PW/2003 pending before the Metropolitan Magistrate's 3rd Court, at Esplanade, Mumbai. In terms of clause 8(c) of the said consent terms, the petitioner, today has handed over to the respondent three demand drafts being Demand Draft No.074634 for Rs.10 lakh, Demand Draft No.074633 for Rs. 10 Lakh and Demand Draft No.074632 for Rs.9 lakhs, (totalling to Rs.29 lakhs). Photo copies of the three demand drafts are placed on record. Respondent no.2 acknowledged receipt of the said amount of Rs. 29 lakhs towards permanent alimony.

6. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said statement in the affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the criminal proceedings R.C.C.No.403/PW/2003 in question initiated by her against the Petitioner for the offence punishable under sections 498A, 406 r/w. 34 of the Indian Penal Code, 1860.

7. The Apex Court in B. S. Joshi vs. State of Haryana reported [AIR, 2003 SC 1386] has held that in the event of settlement of matrimonial dispute, the FIR under Section 498A can be quashed, even though, the said offence is not compoundable in terms of Section 320 of the Cr.P.C.
8. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”
9. Similar view has been taken by the Full Bench of this Court in Abasaheb Yadav Honmane vs. State of Maharashtra [2008(5) LJ.Soft. 46].
10. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we

find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

11. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings.

12. Accordingly, application is allowed. The Complaint vide R.C.C.No.403/PW/2003, registered through Colaba Police Station is quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)