

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1121 OF 2014

Nashim Mohammad Baksh and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. N. V. Sawant for the Petitioner.

Mr. J. P. Yagnik, learned APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **February 12, 2015.**

P. C. :

1. This is writ petition under Article 226 of the Constitution of India read with 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings of criminal case No. 34/P/2012 pending on the file of the Metropolitan Magistrate, 53rd Court at Mulund, Mumbai for the offence punishable under sections 498A, 406, 323 and 504 read with 34 of the Indian Penal Code, 1860. The said case has arisen from C.R.No. 174 of 2011 registered at Bhandup Police Station at the instance of Respondent No. 2 against the Petitioners.

2. Petitioner No. 1 and Respondent No. 2 got married on 20th May 2010. For one or another reason, parties could not make it to be happy married life. Matrimonial disputes gave rise to the initiation of civil as criminal proceedings by the

parties. The above stated criminal proceeding is one of them.

3. The learned Counsel appearing for the respective parties submitted that the parties have settled all their disputes amicably and in view of the said undertaking arrived at between them, the present writ petition is filed by the Petitioners for quashing the aforesaid criminal proceeding by consent. The learned Counsel submitted that but for the offences being non compoundable, the parties have approached this Court under its extra-ordinary jurisdiction seeking quashing.

4. Respondent No.2 - the complainant has filed an affidavit in this Court dated 12th February 2015. In paragraph 3 of the said affidavit, she has stated that she all disputes between her family and the Petitioners' family have been settled amicably and talaq has taken place. She has further stated that she does not wish to continue with the criminal case bearing No. 34/P/2012 pending on the file of the Metropolitan Magistrate, 53rd Court, Mulund, Mumbai initiated at her instance against the Petitioners. In paragraph 4, she has recorded her no objection for quashing the aforesaid case.

5. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said 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 in question initiated by her against the Petitioners.

6. 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. The relevant observations of the Apex Court are contained in Paras 14 and 15 which are reproduced herein below:

“14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. 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.”

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].

7. 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 policy law involved in the matter. The offence alleged cannot be said to have any impact on the society. 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.

8. 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. Accordingly, petition is made absolute in terms of prayer clause (A).

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]