

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

CRIMINAL WRIT PETITION NO. 2621 OF 2015

Mr.Aditya Kathula & Ors.

..Petitioners

v/s.

The State of Maharashtra & Anr.

..Respondents

Ms. Kejashri Thakkar i/b. prshant Parsurampuriah for the Petitioner.

Ms.Gulestan Dubash for the Respondent No.2.

Mrs.M.H.Mhatre, APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : JULY 16, 2015.**

P.C.

1. The present petition is filed for quashing the proceeding of the Criminal Case No. 2319/PW/2013 pending on the file of learned Metropolitan Magistrate's 17th Court, at Borivali, Mumbai. The said case arises out of registration of FIR No. 16/2013 with Samta Nagar Police Station, Kandivali (East) at the instance of respondent no.2 for the offence under Section 498A, 406, 323, 504 r/w. 34 of Indian Penal Code.
2. The petitioner no.1 and respondent no.2 are husband and wife. Rest of the petitioners are family members of the petitioner no.1. The

matrimonial dispute between the parties give rise to filing of the present FIR.

3. During pendency of trial parties settled their dispute amicably and have approached this court for quashing the subject criminal case by consent.

4. Respondent no.2 has filed affidavit in reply dated 9.6.2015. In paragraph 7 of the affidavit she has given no objection to quash the said FIR and the criminal case pending before the 17th Court, Borivali, Mumbai.

5. 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 in question initiated by her against the Petitioners for the offence punishable under sections 498A, 406, 323, 504 r/w. 34 of the Indian Penal Code, 1860.

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.PC. 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.”

7. 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].

8. 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.

9. 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.

10. Accordingly, petition is allowed in terms of prayer clause (b).

11. At this stage learned Counsel for the petitioners and the respondent no.2 state that the amount of Rs.3,50,000/- deposited by the petitioners in the Metropolitan Magistrate's 17th Court at Borivali, Mumbai may be given to the respondent wife. We have perused the said order dated 7th March, 2013 passed in Anticipatory Bail Application No. 71 of 2013. The application was filed by the petitioner for anticipatory bail in the subject C.R. Anticipatory bail was granted since the petitioner deposited amount of Rs.3,50,000/-. By the present order we have quashed the proceeding of the criminal case in which the petitioners were granted

anticipatory bail. In the circumstances, and especially in view of the concession given by the learned Counsel we directed the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai to refund the amount of Rs.3,50,000/- along with interest accrued thereon to the respondent no.2 Mrs. Kajal Kathula, on her making proper application.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)