

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 814 OF 2015

Naveen Kantilal Jain and Others. ..Applicants.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Durgesh P. Jaiswal i/b G. M. Dubash for the Applicants.

Mrs. M. M. Deshmukh, learned APP for the State.

Ms. Nita Sonaki i/b Kiran Jain & Co., for Respondent No. 2.

Coram : RANJIT MORE &

V. L. ACHLIYA, JJ.

Date : **November 19, 2015.**

P. C. :

1. Heard learned Counsel appearing for the respective parties. The present application is under the provisions of section 482 of the Code of Criminal Procedure, 1973, whereby the Applicants are seeking to quash the proceeding of CC No. 100/PW/2006 pending on the file of learned Metropolitan Magistrate, Mulund, Mumbai. The said case is the outcome of CR/FIR No.150 of 2006 registered with Bhandup Police Station at the instance of Respondent No.2. The allegations against the Applicants is with regard to the commission of offence punishable under section 498A read with 34 of IPC.

2. Applicant No.1 and Respondent No.2 got married on 23rd

April 2000. Unfortunately, marital bliss could not sustain for longer. Matrimonial disputes between the parties gave rise to the filing of civil as well as criminal proceedings by the parties against one another and the subject matter of present application is one of them.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of above criminal proceedings, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant application is filed for quashing the above criminal proceedings, by consent of Respondent No.2. Counsel submitted that parties have filed consent terms in Petition No.D-31 of 2010 pending on the file of Family Court at Bandra, Mumbai.

4. In the present application, Respondent No.2 has filed affidavit dated 14th October 2015. In the said affidavit, she has given her no objection for quashing the subject criminal case. Her concern reflected in the affidavit is that certain compliances by the Applicants as contained in the consent terms are yet to be made. 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 Applicants for the offence punishable under sections 498A read with 34 of the Indian Penal Code, 1860. She reiterated before us her concerns about the compliances to be made by the Applicants as contained in the consent terms.

5. A copy of the consent terms filed by the parties before the Family Court at Bandra, Mumbai in Petition No. D-31 of 2010 is placed on record by the Respondent along with her affidavit. It is at page 83. Consent terms read thus :

“Consent Terms for amicable settlement.

Petitioner and Respondent have agreed to settle all issues amicable settlement on following terms and conditions.

1. Custody of both the sons Umang, aged 14 yrs old and Darshal, about 13 yrs old will remain forever with the Respondent mother. The Petitioner shall not claim custody of both the children in future and also he has waived his right to access of both the children.
2. Petitioner shall deposit Rs.1,00,000/- (Rs. One lacs only) at Family Court, Mumbai on 13.07.2015, towards arrears of maintenance till date.
3. Petitioner shall apply for quashing criminal case at High Court, Bombay within 10 days from today and the

Respondent shall extend her co-operation to quash criminal proceeding bearing No. PW/100/06 which is pending at MM. Court, Mulund. The Petitioner has already deposit Rs.5,20,000/- at Family Court, Mumbai.

4. Petitioner shall pay total amount of one time permanent maintenance for the children of Rs.6,20,000/- After receiving the said amount Respondent shall not make any claim of further maintenance for the children in future against the Petitioner.

5. Respondent is allowed to withdraw Rs.6,20,000/- on day of disposal of existing petition No. D-31/2010.

6. Respondent has filed RD application which is pending before the Family Court, Mumbai before RD – 24/2011. the Respondent shall withdraw the same on the day of day of disposal of existing petition No. D-31/2010. Respondent shall not have any claim of stridhan in future against the Petitioner of said consent terms submitted at Family Court, Mumbai on 06.07.2015.

7. This is full and final settlement and in future both the parties will not make any claims, counter claims against each other whatsoever nature.”

6. The learned Counsel appearing for the Applicant having taken instructions from Applicant No.1, who is present in the Court, states that the Applicant undertakes to comply with the above consent terms. 2nd Respondent through her counsel, too undertakes to comply with the consent terms.

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. 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].

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. 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.

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. Accordingly writ petition is allowed in terms of prayer clause (B).

10. Both the parties shall appear before the Family Court at Bandra, Mumbai on 2nd December 2015 at 11.00 a.m.. In consonance with the consent terms filed by the parties, Family Court shall pass appropriate orders in Petition No. D-31 of 2010.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]