

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3848 OF 2015

Wasim Anur Pathan and Others.

..Petitioners.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. P. G. Kathane for the Petitioners.

Mrs. M. H. Mhatre, learned APP for the State.

Mr. M. G. Sawardekar for Respondent No. 2.

Coram : RANJIT MORE &
R. G. KETKAR, JJ.

Date : **October 13, 2015.**

P. C. :

1. Learned Counsel appearing for the Petitioner at the outset seeks leave to amend the prayer clauses so as to incorporate the details of criminal proceedings. Leave granted. Necessary amendments be carried out forthwith.

2. In this writ petition under Article 226 of the Constitution of India and section 482 the Code of Criminal Procedure, 1973, the Petitioners have sought to quash and set aside criminal proceedings against them, namely, RCC No.357 of 2015 pending on the file of JMFC, Cantonment Board, Pune, which have arisen from FIR No. 282 of 2014 registered with Wanwadi Police Station, Pune. The said FIR came to be registered at the instance of Respondent No.2, on the allegations concerning

the commission of the offence punishable under sections 377, 498A, 354, 323 and 504 read with 34 of the the Indian Penal Code, 1860.

3. Petitioner No.1 and Respondent No.2 are the husband and wife. Rest of the Petitioners are the family members of Petitioner No.1. The 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 petition is one of them.

4. The learned Counsel appearing for the respective parties submitted that during the pendency of criminal proceedings/trial, with the help and intervention of family members, friends and well-wishers, the parties amicably settled their differences by way of mutual settlement. They submitted that consent terms have been filed before the Family Court at Pune in P.A.No.1370 of 2014 and parties have decided put an end to all disputes. Pursuant to such understanding arrived at between the parties, present petition is filed for quashing the above criminal proceedings, by consent of Respondent No. 2. Under the consent terms, Petitioner No.1 has agreed to pay an amount of Rs.7.30 lacs to Respondent No.2 towards the full and final satisfaction of her claims for permanent alimony. The said amount is deposited in the Family Court. Copy of the consent terms is at page 21 of this petition.

5. Affidavit dated 3rd of September 2015 has been filed by Respondent No.2 wherein she has stated that in pursuance of the consent terms filed before the Family Court, all the disputes and differences between herself and the Petitioners have been amicably settled and therefore she does not desire to prosecute the Petitioners in relation to the subject FIR filed by her. She has solemnly affirmed that she has no objection for quashing the criminal proceedings arising out of FIR filed by her, being FIR No. 282 of 2015.

6. 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.

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 case. Petitioner No. 1 has also got re-married. 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 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. Consequently, petition is made absolute in terms of prayer clause (a).

10. In terms of the consent terms, Respondent No.2 will have to make an application before the concerned Family Court for withdrawal of the amount deposited by Petitioner No.1. It is already recorded in the consent terms that on 2nd Respondent's co-operation for withdrawal of criminal case, she will be entitled to withdraw the said amount. Therefore, no separate order is required from this Court.

[R. G. KETKAR, J.]

[RANJIT MORE, J.]