

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

CRIMINAL APPLICATION NO. 5717 OF 2009

Hemant Sawhney .. Applicant

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. A.M. Sarogi for the applicant
Mrs. U.V. Kejriwal, APP for respondent State

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED: 17th AUGUST, 2015.**

P.C.

1. This application is filed under the provisions of Section 482 of the Cr.P.C. to quash and set aside the proceedings of the Criminal Case No.465/P/2003, pending on the file of learned Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. The said case arises out of registration of FIR, initially numbered as C.R. No.00 of 1999 at Social Service Branch, C.B.C.I.D. Mumbai and subsequently it was transferred to Nehru Nagar Police Station, Mumbai and registered as FIR No.118 of 1999 for the offence punishable under Section 498A, 406 r/w 34 of the IPC and

Section 309 of the Dowry Act.

2. The applicant and respondent no.2 got married on 05.12.1996. The respondent nos. 2, 3 and 4 are the family members of the applicant. The matrimonial dispute between the parties gave rise to filing of the civil as well as criminal cases against each other and the subject matter of the present proceeding is one of them.

3. Pending trial, the parties have settled their dispute amicably and filed consent terms in Family Court Appeal No.210 of 2008, copy of which is annexed at Exh.C at page 122 to the application. In paragraph 2 of the consent terms, the respondent no.2 has undertaken to withdraw all the proceedings filed against the applicant and his family members including proceedings under the provisions of Section 498A, 406 of the IPC. The said Family Court Appeal was disposed of in terms of the consent terms by the Division Bench by an order dated 3rd November, 2009, copy of

which is annexed at page 126. In paragraph 5 of the said order, the Division Bench has observed that the parties will have to approach the concerned Court for quashing the said criminal case and liberty is accordingly granted. In pursuance of this liberty, the present proceedings are filed. Initially, notice was issued to the respondent no.2. Despite service, she did not appear and ultimately Rule was granted and ad-interim relief granted earlier in terms of prayer clause (b) was continued during the pendency of the petition.

4. Mr. Sarogi, learned Counsel for the applicant states that respondent no.2 has been served by paper publication and an affidavit to that effect is filed on record. Despite this, none appeared on behalf of the respondent no.2. Considering that the respondent no.2 has already consented for quashing of the subject proceedings before the Division Bench, who heard that Family Court Appeal and also received an amount of Rs.29 lakhs under the said consent terms, we are inclined to quash the subject

proceedings.

5. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of the complaint, it would reveal that the dispute between the parties is purely a matrimonial dispute. In that view of the matter, we find that in the interest of justice, the criminal proceedings are required to be quashed.

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 498-A 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.”

7. Accordingly, the Criminal Application is allowed in terms of prayer clause (a). The FIR No.118 of 1999 registered by the Nehru Nagar Police Station, Mumbai against the aforesaid applicant being C.C. No.465/P/2003 is quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)