

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4933 OF 2015

Bhavin Bhupatrai Kanakiya and Others. ..Petitioners.

Versus

Riddhi Bhavin Kanakiya and Others. ..Respondents.

Mr. Murlidharan V C. i/b Joy Legal Consultants for the Petitioners.

Mr. Kaushal Porsekar i/b A. B. Kharat for Respondent No. 1.

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

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.

Date : **December 18, 2015.**

P. C. :

1. By this writ petition filed under Article 226 of the Constitution of India, the Petitioners are seeking to quash and set aside the proceedings of Criminal Case No. 14 of 2015 pending on the file of Additional Chief Metropolitan Magistrate, 17th Court, Borivali, Mumbai. The said case is the offshoot of an FIR lodged by Respondent No.1 against the Petitioners with Kandivali Police Station on 6th January 2015, being FIR / CR No. 14 of 2015. The Petitioners are facing trial on the allegations that they have committed offence punishable under section 498A read with 34 of the Indian Penal Code, 1860.

2. Petitioner No. 1 and Respondent No.1 are husband wife. Rest of the Petitioners are the family members of Petitioner No.1. 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.

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 petition is filed for quashing the above criminal proceedings, by consent of Respondent No.1.

4. An Affidavit dated 9th December 2015 has been filed by Respondent No. 2 wherein she has stated that all the disputes between herself and the Petitioners have been amicably settled and now she would be going to reside in matrimonial home. She has further stated that she is not interested in continuing with the criminal prosecution of the Petitioners. She has solemnly affirmed that she is withdrawing all the allegations made against the Petitioners in the said FIR and therefore has no objection for quashing the FIR and proceedings of the criminal case.

5. Respondent No.1 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 for the offence punishable under sections 498A read with 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.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 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 offence. 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 subject criminal proceedings. Accordingly, writ petition is made absolute in terms of prayer clause (a).

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]