

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.105 OF 2016

- 1 Shri Venkata Naga Raghavendra
Ravi Kiran Gorti,
31years of age, son on Shri
Jogarao Gorti, resident of 2-2-
20/2/A, Flat No.402, Sriranga
Nilayam, D.D. Colony, Hyderabad-
500013.
- 2 Shri Jogarao Gorti,
59 years of age, son of Gorti
Satyanarayana, resident of 2-2-
20/2/A, Flat No.402, Sriranga
Nilayam, D.D. Colony, Hyderabad-
500013.
- 3 Smt. Gorti Rani,
55 years of age, wife of Jogarao
Gorti,
resident of 2-2-20/2/A, Flat
No.402, Sriranga Nilayam, D.D. ... Petitioners
Colony, Hyderabad-500013.

Versus

- 1 State of Goa,
through the Public Prosecutor,
High Court of Bombay at Goa,
Altinho- Goa.
- 2 Mrs. Krishna Veena Gorti,
major, daughter of Shri
Devarabholta Veera Ventaka
Prasad,
resident of A-2/F-2, Kurtarkar
Classic,
Opp. Lawande Hospital, near
Power House, Aquem, Margao – ... Respondents.
Goa.

Shri S. G. Bhobe, Advocate for the petitioners.

Shri S. R. Rivankar, Public Prosecutor for the respondent no.1.

Shri Ryan Menezes, Advocate for the respondent no.2.

CORAM : F.M.REIS &

NUTAN D.SARDESSAI, JJ.

DATED : 16th AUGUST,2016.

ORAL JUDGMENT: (PER NUTAN D. SARDESSAI, J.)

1. Heard. Rule. Shri Rivankar, learned Public Prosecutor waives service on behalf of the respondent no.1 and Shri Menezes, learned Advocate waives service on behalf of the respondent no.2.

2. This petitioners seek the relief of quashing and setting aside the Criminal Case No.140/S/2014/III pending before the Court of IIIrd Additional Judicial Magistrate First Class at Margao arising from the chargesheet No.15/2014 and the F.I.R. No.158/2013 dated 22/10/2013 of the Colva Police Station.

3. Shri S.G. Bhobe, learned Advocate for the petitioners contended that the petitioner no.1 and the respondent no.2 who were married as per the Hindu rites and customs had started residing separately on account of the marital disputes which culminated in the respondent no.2, filing a Complaint dated

19/10/2013 against the petitioners at the Colva Police Station which was registered as F.I.R. No.158/2013. The chargesheet was subsequently filed by the P.S.I. Of the Colva Police Station on 22/04/2014 before the learned Judicial Magistrate First Class, Margao under Sections 498-A and 504 r/w Section 34 of the Indian Penal Code ('I.P.C.', for short) and under Section 4 of the Dowry Prohibition Act, being the Criminal Case no.140/S/2014/III before the Court of IIIrd Additional Judicial Magistrate First Class, Margao.

4. Shri S. G. Bhole, learned Advocate for the petitioner submitted that the learned Judicial Magistrate First Class directed that the charge be framed against the petitioners under Sections 498A and 504 r/w Section 34 of I.P.C. vide the Order dated 20/07/2015 which was challenged in the Revision Application No. 82/2015 before the Sessions Court and pending adjudication. It was his further contention that a petition was filed for divorce against the respondent no.2 before the learned Additional Family Court, Hyderabad, however, pending the said proceedings the petitioner no.1 and the respondent no.2 came to an amicable settlement of their marital disputes and in furtherance thereof executed a Memorandum of Terms of Compromise, whereby the petitioner no.1 and the respondent no.2 came to an amicable settlement of their marital disputes between them in accordance

with the terms and conditions mentioned therein and agreed to obtain a divorce by mutual consent as the said marriage had irretrievably broken down.

5. Shri Bhobe, learned Advocate submitted that in terms of the Memorandum of Terms of Compromise, it was agreed that the respondent would withdraw the Criminal Case pending on the file of the Judicial Magistrate First Class and co-operate for its closure and quash the proceedings when such proceedings were initiated by the petitioners. Therefore in view of the terms of the Compromise, the respondent no.2 had undertaken to withdraw the Criminal Case against the petitioners and further undertaken to withdraw the allegations and counter allegations against each other. The offence under Section 498-A of I.P.C. which was invoked against the petitioners, was not compoundable under Section 320 of the Code of Criminal Procedure though the Section 504 of I.P.C. was compoundable. Therefore in view of the law laid down by the Apex Court in **Gian Singh v/s. State of Punjab** [(2012) 10 SCC 303] wherein it was held by the Hon'ble Apex Court that the Court in exercise of its inherent power could quash the criminal proceedings involving non-compoundable offenses in view of the compromise arrived at between the parties and the subsequent judgment of the Apex Court in **Narinder Singh v/s. State of**

Punjab [(2014)6 SCC 466] holding that the Criminal Cases having overwhelmingly and predominantly civil character particularly those arising out of matrimonial relationships or family disputes should be quashed, when parties have resolved their entire disputes among themselves, the petitioners invoked the inherent power of this Court to quash and set aside the proceedings in view of these judgments.

6. Shri Bhobe, learned Advocate also referred to the judgment in **Aniruddha Vasant Kher v/s. State of Maharashtra** [2015 All MR (Cri)4376] of the Bombay High Court where similar circumstances arose and in view of the decree of divorce granted after compromise terms were executed between the parties and further proceedings that were filed against the parties under Section 498A and 504 of the I.P.C. were quashed and set aside in view of the consent terms. In view thereof and as the disputes between the parties were private in nature and essentially matrimonial disputes which had been settled amicably with the intention of the parties to move ahead with their respective lives, the continuance of the impugned proceedings would not be in the interest of justice and further forcing the parties to proceed with the proceedings after they have arrived at a compromise would amount to an abuse of the process of law and hence the

proceedings be quashed.

7. Shri Bhobe, learned Advocate for the petitioners pointed out that the respondent no.2 wife was present in the Court alongwith her father who confirmed that the parties had amicably settled the dispute inter se between them and besides produced the order of the Additional Family Court, Hyderabad pursuant to which a decree of divorce was granted and the marriage solemnized between the petitioner no.1 and the respondent no.2 was dissolved in terms of the compromise.

8. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State conceded in fairness that looking to the powers of this Court and the fact that the parties had amicably resolved their dispute by way of settlement before the Family Court, Hyderabad and the terms of settlement, the petition could be decided appropriately.

9. We have given our thoughtful consideration to the rival contentions and also gone through the records wherein we are only concerned with the validity or otherwise of the F.I.R., as well as the chargesheet filed by the respondent no.1 against the petitioners. It is apparent from the records that although the petitioners were

charged in respect of the offences punishable under Sections 498A and 504 of I.P.C. and Section 4 of the Dowry Prohibition Act, nonetheless the learned J.M.F.C. on considering the material at large before her had held that the accused had to answer the charges in respect of the offences under Sections 498-A and 504 r/w 34 of I.P.C. of which Section 504 is compoundable though Section 498A of I.P.C. is not compoundable. We have also perused the order of the Additional Family Court, Hyderabad pursuant to which the Court has accepted the compromise petition and granted the decree of divorce thereby dissolving the marriage between the petitioner no.1 and the respondent no.2.

10. We have also examined the terms of the compromise pursuant to which the said affected parties had recorded the fact that the respondent no.2 had lodged the report with the Colva Police Station which has registered the offence against the petitioners under Section 498A and 504 r/w 34 of I.P.C. and Section 4 of the Dowry Prohibition Act and that due to efforts of the elders and well wishers of the families, the parties had decided to end the litigation amicably in the interest of both the families and entered into the compromise. These terms further reflect that due to the said understanding arrived at between the parties the respondent no.2 agreed and undertook to withdraw the Criminal

Case pending on the file of the Judicial Magistrate First Class, Margao by co-operating for a closure of the same in favour of the petitioner and his family members or quash the proceedings to be initiated at his instance.

11. It is apparent from these terms arrived at between the parties that the marriage between them which had irretrievably broken down was resolved pursuant to an order of the Judge of the Family Court, Hyderabad. The respondent no.2 who was present in the Court alongwith her father also confirmed that she was not interested to pursue the complaint against the petitioners under Sections 498A and 504 r/w. Section 34 of I.P.C. in view of the amicable settlement arriving between them.

12. In such circumstances, we find that the question of allowing the F.I.R., against the petitioner and the subsequent chargesheet would not at all serve the interest of justice in the present case. In any event, the criminal process cannot be used as a tool of vengeance as against the members of the family on the basis of the allegations levelled against the petitioner no.1 in particular. Allowing such criminal proceedings to proceed against the petitioners would be an abuse of the process of law. Thus, considering the law referred to as laid down by the Hon'ble Apex

Court, we find that there is a case made out by the petitioners for an interference in terms of Section 482 of Cr. P.C. and Article 226 of the Constitution. In view thereof, we pass the following:

O R D E R

1. Chargesheet No.15/2014 and F.I.R. No.158/2013 dated 22/10/2013 of the Colva Police Station against the petitioners are quashed and set aside.
2. Rule is made absolute accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

mv