

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.106 OF 2016.

1. Mr. Vishnu Kashalkar,
s/o Vitthal Kashalkar,
61 years of age,
R/o. H. No. 770, Junaswada,
Mandrem, Pernem, Goa.
 2. Smt. Sheetal Kashalkar,
w/o Vishnu Kashalkar,
54 years of age,
R/o. H. No.770, Junaswada,
Mandrem, Pernem, Goa.
 3. Mr. Gitesh Kashalkar,
s/o Vishnu Kashalkar,
31 years of age,
R/o. H. No.770, Junaswada,
Mandrem, Pernem, Goa.
 4. Dr. Sapna Kashalkar,
d/o Vishnu Kashalkar,
26 years of age,
R/o. H. No.E-27 Nr. Market,
Panaji, Goa.
- Petitioners.

V/S

1. Public Prosecutor
High Court of Bombay
at Panaji, Goa.
2. Police Inspector,
Pernem Police Station,
Pernem, Goa.
3. Mohan Talavanekar,
R/o bazarpeth
C/o Hira Printing Press
Pernem-Goa

4. Smita Talavanekar,
alias Smita Amit Jalni,
House No.34/1468
Tivim, bardez-Goa. Respondents.

Shri Arun Bras De Sa, Advocate for the petitioner.

Shri S. R. Rivankar, Public Prosecutor for the respondents.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

Date:-4th OCTOBER, 2016.

ORAL JUDGMENT (Per Nutan D. Sardessai, J)

Heard Shri A. Bras De Sa, learned Advocate for the petitioner and Shri S. R. Rivankar, learned Public Prosecutor for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate appearing for the respective parties. Shri S. R. Rivankar, learned Public Prosecutor appearing for the respondents waives service.

4. Shri Arun Bras De sa, learned Advocate for the petitioner submitted that the marriage between the petitioner no.3 and the respondent no.4 was dissolved pursuant to the divorce between them. The respondent no.4 had even remarried after the settlement of their dispute. Besides, the complainant had made a statement before the Judicial Magistrate, First Class, Pernem that they were not interested in pursuing the case as the marriage of his daughter i.e the respondent no.4 was dissolved and she had remarried and therefore he did not want to pursue the proceedings. This was therefore a fit case to quash the FIR No.61/2013 dated 18.4.2013 registered before the respondent no.2. Shri A. Bras De Sa, learned Advocate relied in **B. S. Joshi and others Vs. State of Haryana and another, [AIR 2003 SC 1386]** in support of his case. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State left the matter to the Court and on his part placed reliance in **Yogendra Yadav and others Vs. State of Jharkhand and another, [(2014)9 SCC 653]**.

5. The respondent no.2 had registered the FIR No.61/2013 dated 18.4.2013 based on the complaint of the

father of the respondent no.4 i.e the respondent no.3 lodged against the petitioners under Sections 498A, 504, 506(ii) read Section 34 of IPC. The respondent no.3 had carved a case before the respondent no.2 that the petitioners had assaulted his daughter, subjected her to cruelty by harassing her with an intent to meet the unlawful demand for dowry and thereby committed an offences punishable under Sections 498-A, 504,506(ii) read with Section 34 of IPC. Thereafter the respondent no.2 had filed their final report in terms of Section 173 of the Cr. P.C. before the JMFC, Pernem.

6. It was the contention of Shri Arun Bras De Sa learned Advocate for the petitioners that the learned Ad-hoc Senior Civil Judge, Mapusa vide the judgment and decree dated 30.1.2016 had annulled the marriage of the petitioner no.2 with the respondent no.4 and directed the Sub Registrar cum Civil Registrar of Pernem to cancel the entry. The respondent no.4 had remarried and nothing survived in the matter and moreover when her father, the respondent no.3 had categorically made a statement before the learned JMFC that the disputes were resolved and he did not wish to pursue the complaint. The mother of the respondent no.4 too had

given her statement before the learned JMFC, Pernem conveying that she was not interested in pursuing the proceedings since the marriage of the respondent no.4 with the petitioner no.3 was dissolved and their daughter had remarried consequent upon the settlement of the disputes. The respondent no.4 too had given a statement along similar lines.

7. In **B. S. Joshi** (supra), the question that fell for determination was about the ambit of the inherent powers of the High Court under Section 482 of the Cr.P.C. read with Articles 226 and 227 of the Constitution of India to quash the Criminal Proceedings. The scope and ambit of powers under Section 482 has been examined by this Court in a catena of earlier decisions but in the present case that is required to be considered in relation to a matrimonial dispute. Their Lordship no doubt observed that the object of introducing Chapter XX-A containing Section 498A IPC was to prevent the torture to a woman by her husband or by the relatives of her husband. Section 498A IPC 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. At the same time the Hon'ble Apex Court observed that there had been an outburst of matrimonial disputes in recent times resulting in the filing of the complaint by a wife under Section 498A and 406 of IPC not only against the husband but his other family members also. When such matters are resolved either by the wife agreeing to rejoin the matrimonial home or mutual separation of the husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High court and jointly pray for quashing of the Criminal Proceedings or the First Information Report or Complaint filed by the wife, can the prayer be declined on the ground that since the offences are non-compoundable under Section 320 of the CrPC and therefore it is not permissible for the Court to quash the Criminal Proceedings or FIR or Complaint. It was held in the circumstances that the High Court should have quashed the proceedings for encouraging genuine settlements of matrimonial disputes and that for quashing the Criminal Proceedings or FIR or Complaint by Court, it did not affect or limit the powers of the Court under Section 482 of CrPC.

8. In **Bosco Renold Kenny** (supra), the petitioner no.1

had married the deceased and the petitioner no.1 used to work on a ship at Dubai while the wife, since deceased, resided with her in laws. The FIR showed that the deceased had committed suicide by consuming poison. The material collected by the Investigating Officer showed that the deceased was demanding a separate house and on this count there were altercations between her and the petitioner no.1. During the course of her statement recorded on 30.4.2013, it was evident that there was altercations between her and the petitioner no.1 and in a fit of rage, she had consumed poison. During the pendency of the Criminal Proceedings which were pending before the Sessions Judge, the parties amicably settled their differences by way of mutual settlement and pursuant to the same, the petition was filed for quashing the Criminal Proceedings by the consent of the respondent no.2, the original complainant who filed an affidavit that her daughter was hyper-sensitive and short-tempered, that the petitioner no.1 or their family members never ill-treated her daughter and she had no objection for quashing the proceedings of the Sessions Case against the petitioners. Considering these aspects of the matter a Division Bench of this Court deemed it a fit case for quashing of the

proceedings and also considering the judgment in **Madan Mohan Abbot Vs. State of Pubjab, [(2008)4 SCC 582]** held that no purpose would be served by keeping the Criminal Proceedings pending except burdening the Criminal Courts which are already overburdened. The Division Bench also considered the decision in **Narinder Singh Vs. State of Pubjab, [2014 AIR SCW 2065]** which held similarly that there was no impediment in quashing the criminal proceedings and quashed the proceedings.

9. **Yogendra Yadav** (supra), considered the question whether the quashing of non-compoundable offences in view of the compromise between the parties could be permitted in exercise of the powers under Section 482 of Cr. P C. Their Lordships held that the High Court can quash a criminal proceeding in exercise of its discretion any power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. Further this would depend on the facts and circumstances of each case. Offences which involve moral turpitude, grave offences like, rape, murder etc cannot be

effaced by quashing the proceedings because they will have harmful effect on the society. Such offences cannot be said to be restricted to two individual or two groups. If such offences are quashed, it may send a wrong signal to the society. However, when the High Court was convinced that the offences are entirely personal in nature and therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure the ends of justice, it may quash the same. In such cases, the prosecution becomes a lame prosecution and pursuing such lame prosecution becomes a waste of time and energy and also likely to unsettle the compromise and obstruct the restoration of peace. On the facts it was held that though offences under Sections 326 and 307 are non-compoundable, but considering the compromise petition filed by the parties in the lower Court and the fact that they were neighbours and that there was harmonious relationship between the two sides and that they were living peacefully, the pending proceedings were directed to be quashed. The Apex Court placed reliance in **Gian Singh Vs. State of Punjab, [(2012)10 SCC 303]** where the Apex Court had observed at paragraph 58 that:

Paragraph 58:- where the High Court quashes a criminal proceedings having regard to the fact that the dispute between the offender and the victim is not settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

10. Considering thus the facts that the parties have amicably settled their dispute, the marriage between them i.e the petitioner no.3 and the respondent no.4 being dissolved and the fact that the respondent no.4 has further remarried, we find it appropriate in the circumstances therefore, that there is no impediment in quashing the proceedings against the petitioners. Hence, we allow the petition and quash and set aside the proceedings in the Criminal Case No.4/2/2014 on the file of the JMFC, Pernem.

11. Rule is made absolute. The petition stands disposed off accordingly.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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