

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2360 OF 2016

1. Amit Kanwal Malik,
2. Kanwal Swarup Malik,
3. Mrs.Suman Kanwal Malik,
All R/o.B-166, 1st Floor, East of Kailash,
New Delhi-110065.

Petitioners

versus

1. State of Maharashtra,
2. Mrs.Shivani Malik,
R/o.B-303, Sahyadri Building,
New Modern Usha Colony, Evershine Nagar,
Malad (West), Mumbai.

Respondents

Mr.Ashish S. Chavan for Petitioners.
Mr.Prasad Dhalwalkar for Respondent no.2.
Mr.K.V.Saste, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 1st August 2016

PC :

1. Rule. Rule made returnable forthwith. Mr.Prasad Dhalwalkar waives service for Respondent no.2 and Mr.Saste, learned APP, waives service for State.

2. The Petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India and sought to

challenge the criminal proceedings pending in the Court of Metropolitan Magistrate, 68th Court, Borivali, Mumbai vide C.C. No.1513/PW/2016.

3. The proceedings under challenge were initiated at the instance of second Respondent by registration of an first information report ('FIR') bearing CR No.118 of 2014 registered on 20 May 2014 for offences punishable under Sections 498A, 323, 504, 506 read with Section 34 of Indian Penal Code ('IPC'). The Petitioners were arraigned as accused in the said FIR. On completing the investigation, a charge sheet was filed before the aforesaid Court where presently the proceedings are pending.

4. The Petitioners and the second Respondent have made a joint request that the impugned proceedings may be quashed and set aside on account of amicable settlement arrived at between both the parties.

5. Brief facts which are relevant for adjudicating present petition are as follows :

(a) Petitioner no.1 was married to the second Respondent on 15 May 2006. Petitioner nos.2 and 3 are the parents of Petitioner no.1. Petitioner no.1 and the second Respondent had a son who was born on 26 November 2007 namely Master Aryan Malik;

(b) On account of certain differences, Petitioner no.1 and the second Respondent could not adjust with each other and the

latter left the matrimonial home on 2 January 2014 and moved to Mumbai with her son and since then they have been living separately;

(c) It is alleged in the FIR that second Respondent was being harassed by the accused. She was abused and assaulted by the accused which had resulted in physical and mental cruelty to her;

(d) Petitioner no.1 instituted a divorce petition against second Respondent under Section 13(1)(ia) of Hindu Marriage Act for dissolution of the marriage on 29 March 2014 before the Family Court, at New Delhi;

(e) The second Respondent also filed M.J.Petition No.A-1049 of 2014 seeking divorce from the Family Court, at Bandra, Mumbai;

(f) The second Respondent filed a custody petition seeking permanent custody of the son vide Custody Petition No.D-85/2015 before the Family Court, at Bandra, Mumbai. Petitioner no.1 also filed custody petition seeking custody of the minor son before the Family Court, at New Delhi;

(g) On 20 May 2015, the Family Court, at New Delhi, passed an ex-parte decree of dissolution of marriage between Petitioner no.1 and Respondent no.2;

(h) During course of the proceedings, due to intervention of family members etc; the parties have resolved their disputes.

Respondent no.2 has executed an affidavit dated 13 June 2016 recording that she has no objection for quashing the proceedings initiated by her by this Court. The said affidavit has been annexed to this petition.

6. Learned counsel appearing for the Petitioners and second Respondent submitted that the terms of settlement are being arrived at between the parties. As per the terms of settlement, the second Respondent has agreed to withdraw the divorce proceedings initiated by her and that she would hand over permanent custody of her son to the Petitioner no.1 and she will have visitation and calling rights to her son without prior notice. It was further agreed that the second Respondent shall not seek any alimony, maintenance or any other sums of money.

7. Learned counsel for the Petitioners further submitted that Memorandum of Understanding dated 10 June 2016 has been executed between Petitioner no.1 and second Respondent. In terms of the above mentioned settlement arrived between the parties, the custody of the son was handed over to Petitioner no.1 on 14 June 2016. It is submitted that the parties have agreed to withdraw cases/complaints filed against each other. In the affidavit executed by the second Respondent, which has been annexed to the petition, she has stated that she has settled all her claims against Petitioner no.1 and his parents in terms as mentioned in the petition. It is further stated that she has no objection if this Court quashes the FIR registered at her instance for offences punishable under Sections 498A, 323, 504, 506 read with Section 34 of IPC, which is now

culminated in filing of the charge sheet pending before the concerned Court.

8. We have perused the contents of the petition as well as affidavit executed by the second Respondent. The parties were present in the Court. We have also heard learned counsel for the Petitioners and second Respondent as well as learned APP. It is apparent that the dispute between the parties had arisen out of matrimonial differences and the issues which includes custody of the child, are being resolved. The parties have also resorted to divorce proceedings which are also resolved. Thus, the dispute is private in nature and this Court can entertain this petition and allow the prayers made therein. The Apex Court in the case of **B.S.Joshi Vs. State of Maharashtra**¹, has illustrated the principle that High Court may quash criminal proceedings or FIR or the complaint, in the event of settlement between the parties and Section 320 of Code of Criminal Procedure, 1973 does not limit or affect the powers of High Court. The proceedings under challenge before the Apex Court were arising out of FIR registered under Section 498A of IPC. A Larger Bench of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another**², has observed that the High Court in exercise of its powers may quash the criminal proceedings in the event of settlement being arrived at between the parties in relation to the disputes which are of private nature. In the light of the aforesaid observations and taking into consideration the factual aspects of this matter, we are inclined to allow this petition in exercise of power under Article 226 of the Constitution of India.

1 (2003)4-SCC-675

2 (2010)12-SCC-303

9. Hence, we pass following order :

(a) Rule is made absolute;

(b) Criminal proceedings in C.C. No.1513/PW/2016 pending before the Court of Metropolitan Magistrate, 68 Court, Borivali, Mumbai which had arisen out of CR No.118 of 2014 registered at Bangur Nagar Police Station, Goregaon, Mumbai for offences punishable under Sections 498A, 323, 504, 506 read with Section 34 of IPC, are hereby quashed and set aside;

(c) All concerned to act on an ordinary copy of this order duly authenticated by registry of this Court.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST