

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 707 OF 2015

Khawja Mohmad Shaikh and Others. ..Applicants.
Versus
 State of Maharashtra & Another. ..Respondents.

H. S. Shinde for the Applicants.
J. P. yagnik, learned APP for the State.
Sujata Rajguru for Respondent No. 2.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.
Date : **March 4, 2016.**

P. C.:

1. Heard the learned Counsel appearing for the respective parties and learned APP for the State. By this application filed under section 482 of the Code of Criminal Procedure, 1973, the Applicants are seeking to quash the proceedings of CC No. 54/PW/2015 pending on the file of learned Metropolitan Magistrate, Railway Mobile Court at Andheri, Mumbai, which has resulted from the FIR registered against them at Versova Police Station, Mumbai, being CR.No.256 of 2012 wherein the Applicants are alleged to have committed an offence punishable under section 498A read with 34 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No. 2 herein.

2. Applicant No.1 and Respondent No. 2 are the husband wife. Rest of the Applicants are the family members of Applicant No.

1. The matrimonial disputes between the parties gave rise to the filing of subject FIR.

3. The learned Counsel appearing for the respective parties submitted that during the course of on going trial of above criminal case, 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 application is filed for quashing the above criminal proceedings, by consent of original complainant - Respondent No. 2 herein.

4. Respondent No.2 has filed an affidavit dated 4th March 2016 wherein she has stated that she is not interested in continuing with the criminal prosecution of the Applicants in the subject FIR or criminal case. She has solemnly affirmed that she is withdrawing all the allegations made against the Applicants in the said FIR and criminal proceedings and that she has no objection for quashing the proceedings of the criminal case No. CC No.54/PW/2015.

5. Respondent No.2 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 instituted at her instance against the Applicants.

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, thus, 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 crime. 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. We are of the view that in the backdrop of the aforesaid fact-situation, the continuation of prosecution of the Applicants in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the said proceedings in order to secure the ends of justice. We

are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end.

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 criminal proceedings in question. Accordingly, application is allowed in terms of prayer clause (a).

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]