

2. The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") is for quashing the First information Report registered on 9 August 2012 at the instance of the second Respondent-wife with Meghwadi Police station, Mumbai.

3. The offence alleged is under section 498-A of the Indian Penal Code. We have perused the statement of the second Respondent on the basis of which the impugned First Information Report was registered. She has stated that her marriage with the Applicant was solemnized on 4 July 2002. She has admitted that she was aware that the Applicant was a divorcee. She has made several allegations against the Applicant as regards the demands made by the Applicant and alleged cruelty. She has stated on 23 April 2009, she alongwith her son went to Abu Dhabi and started residing with her parent. She stated that thereafter, the Applicant started visiting the house of her parent and started giving threats. Every time, he used to demand money from her father. She stated that on 17 September 2010, she filed a Petition being No.A-2197 of 2010 in the Family court at Bandra against the Applicant for seeking a decree of divorce on the ground of cruelty under clause (ia) of sub-section 1 of section 13 Hindu Marriage Act 1954. She has stated that thereafter, the Applicant applied to the Court of Abu Dhabi for custody of the child. She stated that in the year 2009, she

has converted herself to Muslim Religion. She has stated that she is apprehending threats to her life as well as the life of her son. There are vague allegations made in the First Information Report as regards certain phone calls made by the Applicant.

4. Our attention is invited to the averments made in the Petition No. A-2197 of 2010 filed by the second Respondent in the Family Court at Mumbai. After perusing the said Petition, we find that most of the allegations made in the statement on the basis of which the First Information Report has been registered find place in the said Petition. In the said Petition filed on 17 September 2010, she has stated that they have not co-habited as husband and wife from February 2009. Even in the said Petition, she has stated that on 23 April 2009 she proceeded to Abu Dhabi and started residing with her parents.

5. On the last date, it was pointed out by the learned Counsel for the Applicant that the said Petition has unconditionally withdrawn by the second Respondent. Today, the learned Counsel appearing for the Applicant has produced on record a photo copy of certified copy of the said Petition, on which the order of withdrawal has been recorded. It appears that the said Petition was withdrawn unconditionally by the second Respondent on 13 February 2014.

6. The First Information Report was registered at the instance of the second Respondent on 9 August 2012. As stated earlier, on 17 September 2010, the second Respondent had filed the aforesaid matrimonial Petition in the Family Court at Mumbai making the same allegations which are made in the statement made by her before the Police. This delay is not explained by the second Respondent. Moreover in the First Information Report, the second Respondent made allegations of cruelty for the period from 2002 to 13 July 2012. In her statement, she has referred to the proceedings for Petition of divorce filed by her in the Family Court at Bandra, Mumbai. She has stated that from 23 April 2009, she is residing with her parents. Except for a vague statement that she is receiving phone calls on her cell phone from the Applicant, there is no allegation made in the statement by the second Respondent about any objectionable overt act on the part of the Applicant after April 2009.

7. Apart from the gross delay in lodging the FIR, now the second Respondent has unconditionally withdrawn her Petition for divorce filed in the Family Court at Bandra, Mumbai. Notwithstanding adjournments granted from time to time, the second Respondent has not chosen to appear before this Court. She has not given instructions to her Counsel.

8. In our view, the act of filing of a complaint with the Police belated on 9 August 2012 and thereafter continuing with criminal proceedings is nothing but the abuse of process of law especially in the light of the conduct of the second Respondent of unconditional withdrawal of matrimonial Petition before the Family Court at Bandra, Mumbai, in which the divorce was sought by her on the basis of which the FIR was registered.

9. Therefore, this is a fit case to exercise powers under section 482 of CrPC. Accordingly, the Application must succeed and we pass the following order:

ORDER

(I) Rule is made absolute in terms of prayer clause (a), which reads thus:

“(a) That this Hon'ble Court be pleased to quash and set aside FIR No.179 of 2012 registered on 9.08.2012 by Meghwadi Police Station.”

(ii) There shall be no order as to costs;

(A.A. SAYED, J.)

(A.S.OKA, J.)