

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 50 OF 2014

Shri Natrajan Sundaresan

.... Petitioner

vs

1 State of Maharashtra,
through Public Prosecutor,
High Court, Criminal Appellate Side,

2 Mrs. Shadi Natarajan

.... Respondents

Mr. Gaurav Palkar I/by Mr. Prasad Kulkarni & Associates for the
petitioner.

Mr. J. P. Yagnik, APP for respondent No.1-State.

Mr. Makrand Kale, Advocate for respondent No.2.

**CORAM: ANOOP V. MOHTA AND
RAVINDRA V. GHUGE,JJ.**

DATE : April 18, 2017

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

1 The Petitioner-husband has filed this Petition for quashing
and setting aside FIR bearing No. 282/2012, registered under
Section 498A, 323 and 504 of Indian Penal Code (IPC) with Yerwada
Police Station, Pune in the following background:

During December, 1993 the Petitioner (husband) met Mrs. Shad Natrajan (nee Masrour) (the wife) (Respondent No.2) who is a Muslim of Iranian origin. They got married in London, U.K. The marriage was registered at Ealing Registration District in UK. In 1994, the Petitioner and Respondent No.2 came back to India after the marriage. They have a daughter (15 years) and a son (10 years) from this wedlock.

2 On 5th June, 2012, the Petitioner returned home early and to his utter shock, dismay and disbelief, he caught the wife and Mr. Navjeet Sharma committing adultery. On 18th June, 2012, ironically, instead of taking any action against the wife and her paramour, the Police registered the impugned FIR bearing FIR No. 282/12 under sections 498-A, 323 and 504 of IPC against the Petitioner in Yerwada Police Station, based on a complaint filed by the wife. On 27th August 2012, the learned Sessions Court confirmed the interim Anticipatory Bail to the Petitioner.

3 The parties have ultimately settled the issues. On 16.12.2016, the Petitioner and Respondent No.2, have filed a joint

Petition for divorce by mutual consent under Section 28 of the Special Marriages Act, 1954 read with Section 18 of the Foreign Marriage Act, 1969.

4 The Petitioner has filed the present Petition on 13.01.2014. Affidavit dated 10.03.2017 is also filed by the wife (respondent No.2) with the specific averments about amicable settlement including the fact of presenting the joint petition for divorce by mutual consent. The Petitioner has also placed on record an affidavit dated 17.04.2017.

5 The Petitioner and respondent No.2 both are present in Court with their counsel and make statement that they have settled the matter and accordingly filed the joint petition for settlement before the Family Court and affidavit in this Court for settlement.

Compounding of non-compoundable offences.

6 The offences which are compoundable as contemplated under Section 320 of Criminal Procedure Code (Cr PC), there is no issue with regard to the passing of an appropriate order based upon

the settlement between the parties. The offences which are not compoundable, in the present case like Section 498-A of Indian Penal Code, are always a matter of discussion. However, we have to see and consider the facts of the case including the background of litigations, specifically when the same revolve around the matrimonial dispute between the parties. The law in this regard is settled by various decisions. There are various judicial pronouncements by the Supreme Court as well as High Court in regard to the power of High Court under Article 226 of the Constitution of India and/or under Section 482 of Cr PC.

Matrimonial disputes

7 We are concerned in the present case with the matrimonial dispute and stated offences arising out of the relationship. The following are the cases where in matrimonial matters, though offences are non-compoundable, yet in view of the settlement/compromise/consent decree, the Supreme Court and the High Courts, have passed the compounding/settlement order by invoking Articles 142/226 of the Constitution of India read with 482 of Cr. PC and quash and set aside the respective FIR/criminal proceedings. Some of the judgments of the Supreme Court are as

under:

- (1) *B. S. Joshi and ors v. State of Haryana and anr.*¹,

This was a case under Section 498-A, 323 and 406 of of Criminal Procedure Code.

“12 The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.”

- (2) *Gian Singh v. State of Punjab and anr.*²

“61 In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question (s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.

1 (2003) 4 SCC 675

2 (2012) 10 SCC 303

62 In view of the above, it cannot be said that B. S. Joshi (2003)⁴ SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1 were not correctly decided. We answer the reference accordingly. Let the matters be now listed before the Bench(es) concerned.”

(3) *Jitendra Raghuvanshi vs. Babita Raghuvanshi*³

“17 In the light of the above discussion, we hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of the Code does not limit or affect the powers of the High Court under Section 482 of the Code.”

This was a case also under Section 498-A, 406 read with Section 34 of Dowry Prohibition Act, 1961.

(4) *Yogendra Yadav v. State of Jharkhand*⁴

“4However, when the High Court is convinced that

³ (2013) 4 SCC 58

⁴ (2014) 9 SCC 653

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 ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.”

- (5) Gold Quest International Private Limited v. State of Tamil Nadu and ors.⁵

“8 In view of the principle laid down by this Court in the aforesaid cases, we are of the view that in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr PC read with Article 226 of the Constitution.”

5 (2014) 15 SCC 235

CONCLUSION:

8 It is to be noted that there cannot be automatic compounding of offences. The parties/victims must forward a proposal, as prescribed under Section 320 of Cr PC to settle and get the offences compounded. So far as the non-compounding offences are concerned, ordinarily the Court has no power to compound it, as it would amount to passing order beyond the scheme and object of Section 320 of Cr PC. However, in view of Article 226 of the Constitution of India, Section 482 of Cr PC, in the given facts the High Court may pass an appropriate order, based upon the consent terms and settlement, including of setting aside and/or quashing of such criminal proceedings. The Courts, in above decisions, have also noted, on given facts, when the contesting parties themselves have settled the disputes/conflicts and arrived at the settlement and reflected it in writing, the continuation of such criminal proceedings would amount to a futile exercise/ordeal. Apart from the prolonged trial, ultimately, the learned Judge and/or Judges may require to face various difficulties in passing the final order for and/or against the same parties, who have settled the matter. In a matrimonial matters,

wherein parties have arrived at settlement, all the consequential disputes/conflicts need to be settled and concluded at the earliest to give fruitful result to their settlement/compromise/consent terms. Any pendency and specifically for and against the same parties and their relations would certainly hamper and delay the matrimonial settlements and conflicts. In the present case, Section 498-A is the main Section, which is non-compoundable. The offences are registered on the belated & afterthought complaint filed by the wife in the above background and as both the parties have arrived at settlement, we are inclined to quash and set aside the FIR so lodged against the husband-Petitioner, to enable the parties to resolve the matrimonial/conflicts. In matrimonial matters, an accused/complainant/victim may be accused of many such allegations or counter allegations, by the other party and/or vice versa. However, ultimately as wisdom prevailed and and they have decided to settle the matters, which will lead into peace of minds to whole family.

9 The concerned parties themselves decided to settle the dispute and accordingly reflected the same in the consent terms. This

is required to be treated as a foundation for granting the prayer so sought. Even otherwise, in such matrimonial dispute, once the stated complaint and/or accused and/or parties, if arrived at particular settlement, at the time of trial and/or passing appropriate final order, this settlement ultimately will play a definite and important role. This may also result into continuation of long drawn trial, but with no fruitful result as the concerned parties may not even be interested or cooperate for conclusion of trial.

10 Recently, the Apex Court in *Central Bureau of Investigation vs. Sadhu Ram Singla & ors*⁶ refused to interfere with the order of quashing and setting aside the criminal proceedings, as the parties have even settled the monetary claims in the commercial dispute on given facts by dealing with Section 320 (9) of Cr PC though the non-compoundable offences registered under Section 471 read with 468 of IPC. The Supreme Court in *CBI (supra)* while concluding in paras 15 and 16 observed as under:

“15 Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their

6 2017 (3) SCALE 166

differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in *Manoj Sharma's case* (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.

16 In view of the discussion we made in the preceding paragraphs, in our opinion, it would be proper to keep the said point of law open. However, in the given facts, we dismiss this appeal.”

11 Therefore, in view of the material and the circumstances under which, as counter blast, the FIR was filed and the affidavits placed on record with settlement terms by the parties, we are of the view, that FIR No.282/2012, registered with Yerwada Police Station, Pune, is required to be set aside and the proceedings arising out of the same, if any.

12 In the result, the following order :

ORDER

(i) FIR No.282/2012, registered with Yerwada Police

Station, Pune, is quashed and set aside.

(ii) The Criminal Application is allowed accordingly.

(iii) No costs

(RAVINDRA V. GHUGE J.)

(ANOOP V. MOHTA, J.)