

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 389 OF 2017

Salim Aslam Ansari and Others.

..Petitioners.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. D. R. Kushwaha for the Petitioner.

Mr. K. V. Saste, APP for the State.

Mr. Ratnesh Dube for Respondent No. 2.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.

Date : **June 8, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the Petitioner and Respondent No. 2 and learned APP for the State. Petition is filed for quashing the proceedings of Criminal Case No.879/PW/2014 pending on the file of learned Metropolitan Magistrate, 60th Court, Kurla. The said case has arisen out of registration of FIR bearing CR No. 166 of 2013, which was registered at Chunabhatti Police Station for the offence punishable under sections 498A, 406 read with 34 of the Indian Penal Code, 1860. The FIR was registered at the instance of Respondent No. 2.

2. Petitioner No. 1 and Respondent No. 2 are the husband and wife. Petitioner No. 2 and 3 are the father and sister of Petitioner

No. 1. The matrimonial disputes between the parties gave rise to the registration of the subject FIR. This FIR was investigated and charge-sheet was filed before the concerned Magistrate.

3. The learned Counsel appearing for the respective parties submitted that pending trial, with the help and intervention of family members, friends and well-wishers, the parties amicably settled their differences by way of mutual settlement and filed consent terms before the Family Court in Petition No. E-240/2013. In these consent terms, Petitioner No. 1 agreed to deposit an amount of Rs.5 lakhs by way of lumpsum alimony towards full and final settlement of the claims of Respondent No. 2. the learned Counsel appearing for the respective parties submitted that Petitioner No. 1 has accordingly deposited this amount before the Family Court. The parties also agreed that they shall take talaq before the Kazi and produce the talaqnama before the Family Court and thereafter Respondent No. 2 is entitled to withdraw the aforesaid amount of Rs. 5 lakhs. Respondent No. 2 agreed to give consent for quashing the proceedings of subject criminal case in the event the Petitioner files petition for quashing.

4. Respondent No. 2 has filed an affidavit. She has re-

iterated whatsoever is stated hereinabove. In paragraph 5, she has given no objection for quashing the proceedings of subject criminal case.

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 initiated by her against the Petitioners for the offence punishable under sections 498A and 406 read with 34 of the Indian Penal Code, 1860.

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.

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. Accordingly, petition is made absolute in terms of prayer clause (a).

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]