

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 601 OF 2017

Mohammed Sameer @ Anees Sharif Shaikh
and Others.

..Petitioners.

Versus

Mehtab Begum Shaikh and Another.

..Respondents.

Mr. Asit K. Singh for the Petitioner.

Mr. Momin Shabir Ahmed for Respondent No. 1.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **April 10, 2017.**

P. C. :

1. The petition is filed for quashing the proceedings of Criminal Case No. 320/PW of 2010 pending on the file of learned Metropolitan Magistrate, 29th Court, Bhoiwada, Mumbai. The said case has arisen out of the registration of FIR bearing No.236 of 2009 registered with Wadala TT Police Station. The said FIR is registered at the instance of Respondent No.1 for the offence punishable under sections 498A, 406, 323, 506 read with 34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act.

2. Petitioner No.1 and Respondent No.1 married on 5th April 2007 as per the Muslim rites and rituals at Mumbai. Due to deep matrimonial disputes, Respondent No.1 filed complaint which was registered as CR No. 236 of 2009. Respondent No.1 also filed

proceedings under the Protection of Women from Domestic Violence Act, 2005 [for short "DV Act"] which was numbered as 360/MA/2009 on the file of learned Metropolitan Magistrate, 69th Court, Mazgaon, Mumbai. In this case, Petitioner No. 1 was directed to pay monthly maintenance @ Rs.4000/- from 15/7/2014. the order granting maintenance was challenged by Petitioner No. 1 by filing an appeal in the Sessions Court, being Appeal No. 549 of 2015. During the pendency of this appeal, parties settled their disputes amicably and filed consent terms wherein Petitioner No. 1 agreed to deposit lumpsum amount of Rs.4,00,001/- towards full and final settlement of all the claims of Respondent No.1 and Respondent No.1 agreed to withdraw / give no objection for quashing of the subject. The Petitioner accordingly has deposited the amount in the Sessions Court. The learned Counsel appearing for the Petitioner on instructions states that he has no objection if Respondent No. 1 withdraws the said amount. Respondent No. 1 has also filed affidavit along with copy of the consent terms. In the affidavit, she has stated that has no objection for quashing the proceedings of the criminal case against all the Petitioners.

3. Respondent No.1 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.

4. 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].

5. 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.

6. 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, petition is made absolute in terms of prayer clause (b).

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]