

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPLICATION NO. 377 OF 2015

1 Mr. Pramod Bhaskerbabu Boga & Ors Applicants
Vs
1 State of Maharashtra & Anr. ... Respondents

Mr. Uday Warunjikar for the Applicants.

Mrs. S.V. Sonawane, APP, for the Respondent No.1-State.

Ms. Vrishali U. Kabare for the Respondent No.2.

***CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.***

THURSDAY, 6TH APRIL, 2017

P.C. :

1 The applicant seeks quashing and setting aside of an FIR bearing No. 301 of 2014 registered at Mahim Police Station alleging offences punishable under sections 498-A, 406, 323 of the Indian Penal Code. It is stated that the complaint was filed after a matrimonial discord and dispute. That is totally private and as between the applicants and the original complainant - respondent No.2.

2 It is stated that the applicant No.1 is the husband of

the original complainant. Accused Nos.2 and 3 are the parents of accused No.1 and accused No.4 is the sister.

3 All of them are arrayed as accused by the second respondent-complainant after the matrimonial relations were strained. The marriage was performed on 12th February, 2012. After some time, it was not possible for the parties to cohabit. Proceedings under the Hindu Marriage Act were also filed. Thereafter, proceedings in the Family Court and various other forums ended by virtue of a settlement. The details of the settlement are also referred in the application before this Court.

4 What, therefore, we have before us is the applicants claim that the disputes and differences are now settled. Since it is not possible to cohabit, they have now decided to end the marriage itself. The applicants place reliance on the proceedings bearing Petition No.A25/2015 pending in the Family court at Bandra, Mumbai. During the pendency of this petition, the disputes have been amicably settled. It is stated that some terms were drawn up in the Family Court and which were tendered. However, the terms necessitate withdrawal of the

present criminal proceedings before the decree of divorce by mutual consent can be passed.

5 When this matter was called out in the morning session, we found that there was no confirmation of this fact by the second respondent-complainant. It is her matrimonial life and it is her rights from the said relationship with the applicant No.1 and which are at stake. We were hesitant because if there was no confirmation of this arrangement by her, then, the question of quashing the proceedings would not arise for they disclose *prima facie* an offence and punishable under the above referred sections of the IPC. We, therefore, placed the matter post recess. That is how now an affidavit is also tendered by the second respondent's advocate. Equally, the second respondent is present.

6 The second respondent, though not completely familiar with English language, says that she has signed this affidavit after the contents thereof were duly explained and interpreted to her. The statements therein would mean not only quashing of the FIR which is the subject matter of the present

application, but eventually a decree of divorce being granted by the Family Court at Bandra, Mumbai. She is present in Court and in her presence, we inquired as to whether she has understood these statements made on affidavit with their legal implications and consequences. She says that this affidavit was to be filed in this Court and she knew that the consequences would be that all her legal rights and proceedings would come to an end. She confirms that this affidavit is filed willingly without any pressure or force. None of the ingredients which vitiate the grant of free consent and spelt out by the Indian Contract Act, 1872, or otherwise are, therefore, attracted.

7 In the above circumstances and when this is purely a private dispute between two families arising out of matrimonial ties which do not affect the larger public interest or the interest of the society in general that we allow this application. The Rule is made absolute in terms of prayer clause (a). All consequential proceedings and pursuant to this FIR would also not survive and stand quashed accordingly.

PRAKASH D. NAIK, J.

S.C. DHARMADHIKARI, J.