

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2254 OF 2017

Shishir Krushna Bhirke and others

Petitioners

versus

State of Maharashtra and others

Respondents

Mr.A.A.Shaikh for petitioners.

Mr.B.G.Tangsali for respondent no.2.

Ms.S.D.Shinde, APP, for State.

CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.

DATE : 12th October 2017

PC :

1. Heard learned counsel for petitioners, respondent no.2 and learned APP. The petition is filed challenging the proceedings arising out of Criminal Case No.0300245/2010 emanated from CR No.I-54 of 2010 registered with Rabodi Police Station, Mumbai under Sections 498(A), 406, 323, 504 r/w 34 of Indian Penal Code lodged by respondent no.2. The said proceedings had resulted into conviction for the offence u/s 498(A) r/w Section 34 of Indian Penal Code and they were sentence to suffer imprisonment for one year.

2. The judgment and order dated 14th September 2015 passed by Chief Judicial Magistrate convicting the petitioners has been challenged vide Criminal Appeal No.192 of 2015, before the Court of Sessions, at Thane. The said appeal is pending and during pendency

the sentence of imprisonment has been suspended. It is submitted that during pendency of the appeal challenging the said conviction, the parties have arrived at amicable settlement and as per their understanding, they have agreed for quashing the said proceedings. Petitioner no.1 is the husband of respondent no.2. The dispute arises out of matrimonial discord between the parties. On intervention of the family relations and the friends, the parties have resolved their disputes amicably and in pursuant to the understanding have approached this Court for setting aside the conviction awarded by the Trial Court in the said proceedings.

3. The respondent no.2 filed Divorce Petition No.A-136 of 2015 against petitioner no.1 before Family Court, at Thane. The parties were referred to marriage counselor of the Family Court. The dispute was amicably settled before the mediator and they filed consent terms on 23rd December 2016 in the petition which was converted into a petition for divorce by mutual consent. The petitioner no.1 has agreed to pay to the respondent no.2 a sum of Rs.4,00,000/- towards permanent alimony and the said amount has been deposited before the Family Court. The respondent no.2 is entitled for withdrawal of the said amount after decree of dissolution of marriage. As per consent terms, after depositing the said amount, the respondent no.2 has agreed to put an end to the proceedings under Section 498 of Indian Penal Code. The said consent terms are annexed to this petition.

4. Respondent no.2 has filed an affidavit dated 7th October 2017. The affidavit discloses that with the help of mediators and well

wishers, settlement has been arrived at between the parties. It is also submitted that the complainant do not want to prosecute the petitioners. She has no objection to allow the petition.

5. It is true that the petitioners have approached this Court after their conviction by the Trial Court for offence punishable u/s 498(A) R/w Section 34 of Indian Penal Code. The petitioners in this regard have relied upon decision of Division Bench of this Court in case of Kiran Tulshiram Ingale Vs. Smt.Anupama P. Gaikwad and others reported in 2006-Cri.L.J.-4591, as well as the decision of Division Bench in Writ Petition No.2356 of 2017 (Nilesh Suresh Mhatre and others Vs. The State of Maharashtra and another), dated 5th July 2017 to contend that even after conviction, the Court can quash criminal proceedings. Having gone through the said judgments, we find that the settlement of the petitioners is supported by said decisions.

6. It can thus be seen that the matter has been amicably settled between the parties. Perusal of the complaint makes it clear that the allegations are totally personal in nature. The entire dispute between the parties is of private nature and does not have any bearing on the society at large. The dispute arises out of matrimonial differences. The Appellate Court cannot compound or quash the proceedings since the offence under Section 498A of IPC is non compoundable. The powers for quashing can be exercised by this Court. The parties have compromised in the present case, even after conviction. In view of the above, the order of conviction be set aside.

7. In that view of the matter and in the interests of justice, the conviction dated 14th September 2015 passed by Chief Judicial Magistrate, Thane in Regular Criminal Case No.0300245 of 2010 is quashed and set aside. Since the order dated 14th September 2015 is set aside, Criminal Appeal No.192 of 2015 filed before the District and Sessions Judge, Thane arising out of the said conviction order has rendered infructuous. Accordingly, the writ petition is allowed in these terms, with no order as to costs.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)

MST