

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4060 OF 2017

Ravi Vithalsa Harihar.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. J. S. Kini i/b Suresh Dubey for the Petitioner.

Mrs. A. S. pai, APP for the State.

Mr. S. G. Mahamuni for Respondent No. 2.

Coram : Ranjit More &

Dr. Shalini Phansalkar-Joshi, JJ.

Date : **November 7, 2017.**

P. C. :

1. Heard the learned Counsel for the Petitioner, the learned Counsel for Respondent No.2 and the learned APP for the State.

2. By this petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioner is seeking quashment of his conviction ordered by JMFC, Pune in RCC No. 3462 of 2011 vide its judgment and order dated 21st September 2013. The Petitioner is also seeking quashment of proceedings of Criminal Appeal No. 5189 of 2013 pending on the file of the learned Additional Sessions Judge, Pune.

3. The Petitioner and Respondent No.2 got married on 18th May 2003. Out of the said wedlock, they have given birth to a male child. Strained matrimonial relations gave rise to the filing

of civil and criminal proceedings by the parties and the subject FIR is one of them. At the instance of Respondent No. 2, FIR bearing CR. No.129 of 2011 came to be registered with Warje-Malwadi Police Station for the offence punishable under sections 498A, 504, 506 and 323 read with 34 of the Indian Penal Code, 1860. Investigation into this FIR was completed and charge-sheet was filed against the present petitioner and his father for commission of the offence punishable under sections 498A, 504, 506 and 323 read with 34 of IPC. The learned JMFC by its judgment and order dated 21st September 2013 acquitted the Petitioner's father. So far as the Petitioner is concerned, he has been held guilty and convicted for the offence punishable under sections 498A and 506 of IPC and he has been sentenced to suffer rigorous imprisonment for one year for the offence punishable under section 498A of IPC and six months for the offence punishable under section 506 of IPC.

4. The Petitioner being aggrieved, has already approached the Sessions Court at Pune and filed Criminal Appeal No.518 of 2013. The learned Counsel appearing for the respective parties submitted that pending said appeal, the parties have settled their disputes amicably and filed consent terms before the Family Court at Nashik in Petition No.392 of 2011. Under the consent terms, the Petitioner agreed to pay to Respondent No.2 an amount of Rs.16 lakh towards permanent alimony. The custody of the child was agreed to be retained by Respondent No.2. Respondent No.2 in turn agreed to give

consent to quash the impugned judgment and order. The Petitioner has accordingly deposited an amount of Rs. 16 lakh in the Family Court at Nashik. Respondent No. 2 will get that amount after the quashment of the subject appeal as well as of impugned judgment and order.

5. In terms of the settlement between the parties and consent terms, Respondent No. 2 has filed an affidavit dated 7th November 2017. She has reiterated what has been stated hereinabove. In paragraph 5, she has requested that this writ petition be allowed. 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 judgment and order whereunder the Petitioner has been convicted and also the proceedings of appeal filed by the Petitioner against such conviction.

6. It is true that settlement was arrived at between the parties subsequent to the Petitioner's conviction for the offence punishable under sections 498A and 506 of IPC and appeal against conviction is pending. However we find, as laid down by the Division Bench of this Court in Kiran Tulshiram Ingale vs. Smt. Anupama P. Gaikwad [2006 Cri.L.J. 4591], that even at appellate stage also this Court can exercise its extra-ordinary power to quash the proceedings and conviction, if parties have arrived at settlement.

7. 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].

8. 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 subject criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened.

9. In the light of the principles laid down by the Apex Court in the aforesaid decisions 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 judgment and order whereunder the Petitioner has been convicted and subject criminal appeal pending on the file of the learned Additional Sessions Judge, Pune. In that view of the matter, the judgment and order made by the learned JMFC, Pune in RCC No. 3462 of 2011, being judgment and order dated 21st September 2013 is quashed and set aside. So also Criminal Appeal No. 518 of 2013 pending on the file of the learned Additional Sessions Judge, Pune is stands disposed of.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]