

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

CRIMINAL APPLICATION NO.537 OF 2018

Sufiyan Hasham A.R. Bharde & Anr. ..Applicants
V/s.
Humaera Sufiyan Bharde & Anr. ..Respondents

Mr.Khan Ishrat Ali Azhar Ali for the Applicants.

Mr.Hakim Salim A.R. for Respondent No.1.

Mrs.P.P. Shinde, APP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 31st OCTOBER 2018

P.C.

1. Heard the learned counsel for the applicants, learned counsel for respondent No.1 and learned APP for the Respondent-State.

2. The application is filed for quashing and setting aside the proceedings in Criminal Case bearing C.C. No.2461/PW/16 pending on the file of Additional Chief Metropolitan Magistrate, 59th Court, Kurla, Mumbai. The said case arises out of the registration of CR No.82 of 2016 registered with Vinoba Bhave Police Station at the

instance of the respondent No.1 for an offence punishable under Sections 498(A), 323, 504, 406 read with 34 of the Indian Penal Code.

3. The applicant No.1 and respondent No.1 are husband and wife and applicant No.2 and 3 are the relatives of the applicant No.1. Matrimonial discord between the parties gave rise to filing of several Criminal as well as Civil cases. The subject matter of the present application is one of them.

4. Pending investigation, parties have settled their dispute amicably and accordingly filed Consent Terms in Case No.27/DV/2016 pending on the file of Additional Chief Metropolitan Magistrate Court at Mazagaon(Sewree), Mumbai. Clause 2 of the consent terms reads as follows :-

“2. It is agreed, confirmed and declared by and between the parties hereto that the applicants herein along with Respondents have agreed to settle all the disputes between themselves at an amount of Rs.10,00,000/- (Rupees Ten Lakh Only) and the same amount shall pay to the Applicant by the Respondents in the following manner;

a) A sum of Rs.1,00,000/- (Rupees One Lakh

Only) shall pay by the Respondents to the Applicant through cheque bearing No.706276, dated 05/04/2018, of Punjab National Bank, Fort Branch. To encash at the time of signing of this consent terms.

b) As sum of Rs.9,00,000/- (Rupees Nine Lakh only) shall pay by the Respondents above named to the applicant through Demand Draft bearing No.149331, dated 06.04.2018 of Punjab National Bank, Fort Branch, in the name of HUMAERA NOOR MOHD., ACHHWA (maiden name of Applicant abovenamed) and the said Demand Draft shall be in the exclusive custody of Hon'ble Court, and the Hon'ble 69th Court handover the said Demand Draft bearing No.149331 dated 06.04.2018, after completion of withdrawal proceedings i.e. quashing of FIR (bearing C.R. No.82/2016, of V.B. Nagar Police Station), through Hon'ble High Court, then formalities of Divorce between the Applicant and the Respondent No.1, with Qazi, and finally withdrawal of present Domestic Violence case. Respondents hereby further agreed if the date of aforementioned Demand Draft comes to an end then the Respondents hereby duty bound to renew the same on his own expenses prior to withdrawal of Domestic Violence Case.”

In terms of the understanding arrived between the parties, they have no objection to quash the subject proceeding. Petitioner No.1 accordingly has filed an affidavit dated 08th October 2018. She has stated that affidavit reads as follows :-

“I, Humaera Sufiyan Bharde Respondent No.1, do hereby state on solemn affirmation as under.

I and the applicant have settled matter as per consent terms on 11.04.2018.

I have not yet received the D.D. of 9,00,000/- (Rupees Nine Lakhs Only) from the Trial Court.

I am told that the renewed D.D. is deposited in the office of the M.M. Court No.69 at Sewree. I have no objection if the proceedings are quashed but the order of this Hon'ble Court be made effective only when I receive the D.D. from the Trial Court.

I may be protected by the Hon'ble Court.”

5. The learned counsel for the applicants submit that in terms of the consent terms applicants deposited Demand Draft dated 06.04.2018 for Rs.9 lakhs in the Court of Metropolitan Magistrate, 69th Court, Sewree, Mumbai. Since, this Demand Draft has expired, the same is revalidated with effect from 28.09.2018. Photostat copy of D.D. is placed on record. The learned counsel for the applicant submit that as soon as the marriage is dissolved between the parties and Protection of Domestic Violence Act proceedings are withdrawn

by respondent No.1, the above referred amount of Rs.9 lakhs is payable to the respondent No.1. Statement is accepted. The respondent No.1 is accordingly permitted to withdraw the said amount after dissolution of the marriage and withdrawal of the D.V. Proceedings. The parties undertake to conclude both the things as expeditiously and within a period of four weeks from today.

6. The Respondent No.1 is personally present before the Court. On specific query, he submitted that in view of the settlement of the parties, the subject proceeding be quashed and set aside.

7. 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. In these circumstances and especially in view of the law laid down by the Apex Court in the case of **B.S.Joshi versus State of Haryana AIR 2003 SC 1386**, we are of the view that quashing of the FIR would be in the interest of respondent No.2. Besides, no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the subject FIR

is required to be quashed. The application is, accordingly, made absolute in terms of prayer clause (D) and is disposed of as such.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)