

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

CRIMINAL APPLICATION NO. 623 OF 2018

Hemant Kishore Ghodke & Ors ... Applicants

Vs.

State of Maharashtra & Anr. ... Respondents

...

Mr. Ganesh K. Sovani for the applicant.

Ms. P.N. Dabholkar, APP for the Respondent-State.

Mrs. Pramila Jadhav for the Respondent No.2

...

CORAM : PRAKASH D. NAIK, J.

DATE : 11th JUNE, 2018

P.C.

The applicants were prosecuted for the offences under Sections 498-A read with Section 34 of Indian Penal Code and other penal offences. The applicants were convicted for the offence under Section 498-A read with Section 34 of Indian Penal Code and were sentenced to suffer Simple Imprisonment. The applicant Nos.1 and 4 were sentenced to suffer simple imprisonment of one year and directed to pay a fine of Rs.3000/-, where as applicant No.3 (accused No.5) was sentenced to suffer simple imprisonment till rising of court and pay a fine of Rs.3000/-. The Judgment and Order passed by the Chief Judicial

Magistrate, Nashik vide order dated 2 July, 2014 has been challenged by preferring an appeal before the Sessions Judge, Nashik vide appeal No. 132 of 2014. The said appeal has been admitted, sentence has been suspended and the same is pending for final disposal.

2. During the pendency of aforesaid proceedings, the parties have arrived at amicable settlement. Other than the present proceedings, the respondent No.2 had initiated proceeding under Domestic Violence Act and applicant No.1 had preferred the marriage petition for divorce.

3. The parties have executed the consent terms before the Court of learned Judicial Magistrate First Class, Nashik in Criminal Misc. Application No. 110/2016 which is arising out of proceeding under the Domestic Violence Act. As per the consent terms, the parties have agreed to withdraw the criminal proceedings initiated against the applicant. The applicants had also agreed to pay a maintenance of Rs.5,50,000/- to the respondent No.2. The consent terms executed between the two parties are annexed to this application at Exh.D. However, clause 4 of the said consent terms read as follows :

“(iv) That, in view of the maintenance arrangement

that is being made hereafter, Master. Sarthak will not be having any kind of succession right in respect of any moveable and / or immovable property of his father i.e the Opponent No.1.”

4. The parties were put to notice that this proceeding may not be quashed on the ground of settlement on the basis of said clause. In the circumstances, the applicant No.1 who is present in the Court being the father of Master Sarthak made a statement that said clause will be deleted from the consent terms. The statement is accepted as undertaking to this Court. The parties are directed to delete clause 4 from the consent terms executed before the Court of Judicial Magistrate First Class, Nashik in the proceedings arising out of Domestic Violence Act. The respondent No.2 is also present in the court. She has tendered the affidavit. The contents of affidavit indicate that she has agreed for settlement and quashing of the proceeding on the ground of settlement. Both parties present in the Court had confirmed the settlement arrived between them. Although, the appeal is pending before the Sessions Court, the Appellate Court has no power to entertain the proceedings on the ground of settlement as section 498-A is a non-compoundable offence and hence the parties have approached this court for quashing of the proceeding.

5. Taking into consideration the fact that the dispute arise out of matrimonial discord and parties have decided to put an end to the dispute and to lead the peaceful life, the proceeding can be quashed.

ORDER

(i) The impugned Judgment and Order dated 2nd July, 2014 convicting the applicants for the offence under Section 498-A read with Section 34 of Indian Penal Code passed by the Chief Judicial Magistrate First Class, Nashik in Regular Criminal Case No. 1124 of 2012 arising out of CR No.I-228/2012 registered at Ambad Police Station, Nashik is quashed and set aside;

(ii) Parties are directed to act in consonance with the consent terms;

(iii) Clause 4 of the consent terms executed between the parties before the Court of JMFC, Nashik vide Exh.48 stand deleted with the consent of the parties;

(iv) Criminal Appeal No. 132 of 2014 pending before the Sessions Court stands disposed of as infructuous;

(v) Parties to act on the authenticated copy of this order.

(PRAKASH D. NAIK, J.)