

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3026 OF 2018

Nilesh Premnath Patil.

..Petitioner.

Versus

Anita Nilesh Patil & Another.

..Respondents.

Ms. Suvarna A. Vast for the Petitioner.

Mr. F. R. Shaikh, APP for the Respondent-State.

Ms. Dhanshree J. Telhure for Respondent No. 1.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **September 12, 2018.**

P. C. :

1. Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.1 and learned APP for the Respondent-State. The petition is filed for quashing and setting aside the proceedings of criminal case No.378/PW/2017 pending on the file of 62nd Metropolitan Magistrate, Bhoiwada, Mumbai. The said case has arisen out of FIR bearing CR. No. 301 of 2016 registered with Worli Police Station, Mumbai at the instance of Respondent No.1 for the offence punishable under sections 498A, 406, 324, 323, 504 and 506(2) of the Indian Penal Code, 1860.

2. The Petitioner and Respondent No.1 are the husband and wife. The matrimonial discord between the parties led to filing of civil as well as criminal proceedings by the parties against one another and the present proceeding is one of them.

3. The learned Counsel appearing for the respective parties

submitted that during the pendency of above criminal proceedings, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present petition is filed for quashing the above criminal proceedings, by consent of Respondent No. 2. They submitted that accordingly parties have filed consent terms for divorce by mutual consent under section 13-B of the Hindu Marriage Act before the Family Court at Bandra, Mumbai in the proceeding bearing Petition No. A-149 of 2018. The said consent terms read thus :

"CONSENT TERMS FOR MUTUAL CONSENT DIVORCE.

Both the parties are agreeable to take divorce by mutual consent on following terms and conditions.;

1. Petitioner shall withdraw all the allegations made against respondent in the above said proceeding.
2. Both the parties are ready to convert their present petition into mutual consent divorce.
3. Both the parties got married on 14.05.2007 and they are staying separately from each other since 05.08.2013.
4. There is one issue born from this wedlock name vinay, aged 10 yrs at present he is staying with respondent mother.
5. Both the parties agree that the permanent custody of the said child shall remain with respondent mother and respondent is agree to give regular overnight and vacation access to the petitioner till April, 2018.
 - a) Respondent is already giving overnight access to the petitioner on every 2nd and 4th Saturday and Sunday, and both the parties agreed to be continue till 30.04.2018.
 - b) Respondent is agree to give overnight vacation access to the petitioner for 15 days in April, 2018, after finish the exam of the child.
 - c) Petitioner does not wish to meet the child after regular access and vacation access from April, 2018, in future, respondent agree for the same.

6. Respondent wife is ready to waived her rights of maintenance/permanent alimony from the petitioner for past, present and future.

7. Petitioner is already paying Rs. 5000/-(Rs. Five Thousand only) maintenance for the child as per the claim of the respondent under D. V .Act. Which is agree between both the parties that he shall continue to pay Rs. 5,000/- still April, 2018, after that respondent does not wish to claim maintenance for the child from the petitioner.

8. Both parties have one joint property at Shahu Chhatrapati Chawlm, Suryanagar, Vikhroli- W , Mumbai 83. Respondent is agree to transfer her 50% share in the name of petitioner on or before 30.04.2018, and decree of divorce by way of Gift Deed.

The petitioner shall bear all the expense to transfer the property on his name and both the parties shall co-operate each other for the same.

9. Respondent shall handover original documents of the said property to the petitioner on the day decree of divorce in the Family court, Mumbai.

10. Respondent shall not claim any title, interest for the above said property to the petitioner in future.

11. Respondent have filed cases against petitioner and his family members i.e. 498A, D. V. Act case at Bhoiwada Court, Mumbai. Respondent undertakes that she shall withdraw the above said cases on or before 30.04.2018 and on or before decree of divorce, both the parties shall co-operate each other for the same.

12. Respondent undertakes to withdraw her E petition No.222/2017 which is pending in this Hon ble Court on the day of decree of divorce.

13. There are no exchanges pending between the parties.

14. Both the parties agreed that the name of the child shall remain the same and in case the respondent remarry and her 2nd husband wants to adopt the child then petitioner undertakes that he shall not have any objection for the same in future.

15. Both the parties shall not interfere in each others life

after passing the decree of divorce and shall not file any civil and criminal proceeding against each other on the basis of past matrimonial events.

16. In view of said consent terms there are no dues and claims of whatsoever nature against each other in respect of movable and immovable property also future.”

4. Respondent No.1 has accordingly filed an affidavit in this Court, being affidavit dated 11th July 2018. In paragraph 11, she has prayed that the proceedings of the subject criminal case be quashed.

5. The Petitioner is present in the Court. On query, he submitted that he has gone through the consent terms referred to above and the same are as per his instructions. He further stated that he will abide by the consent terms.

6. Respondent No.1 is personally present before the Court. On specific query, she submitted that the dispute between herself and the Petitioner is amicably settled and they have decided to dissolve the marriage between them. She also submitted that she will abide by the consent terms referred to above. She also submitted that she has no objection for quashing the proceedings of the subject criminal case. On specific query made by us, she further 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 subject criminal proceedings initiated by her against the Petitioner.

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 FIR alive /..... criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened.

9. In the light of principles laid down by the Apex Court in the aforesaid decision 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 subject criminal proceedings. In that view of the matter, petition is made absolute in terms of prayer clause 20(a).

10. In the light of above facts and circumstances and in the interest of justice we also direct the Family Court at Bandra, Mumbai to dispose of Petition No. A-149 of 2018 between the Petitioner and Respondent No. 1 in terms of the consent terms which are referred to above, as expeditiously as possible and preferably within the period of four weeks from the date of receipt of a copy of this order.

11. Writ petition stands disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]