

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3110 OF 2018

Shwetabh Chandra Varma.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Rohit P. Sawant for the Petitioner.

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

Mr. Shaikh Mohd. Ibrahim I/b Siddapuri & Associates for Respondent No. 2.

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

Date : **October 5, 2018.**

P. C. :

1. Heard the learned counsel for the Petitioner and the learned counsel for Respondent No. 2 and learned APP for the Respondent-State.

2. By this petition filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1908, the Petitioner is seeking to quash and set aside the proceedings of criminal case bearing No. CC 1732/PW/2018 pending on the file of learned Metropolitan Magistrate, 44th Court, Andheri. The said case has arisen from the registration of FIR bearing No. 217 of 2017 with Versova Police Station at the instance of Respondent No. 2 for the offence punishable under section 498A of the Indian Penal Code, 1860.

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

4. The learned counsel for the respective parties submitted that pending trial of the above proceeding, the parties have settled their disputes amicably and have filed consent terms in MJ Petition No.A 2008 of 2016 pending on the file of Family Court at Bandra, Mumbai. Both the parties have agreed to obtain divorce by mutual consent. Clause (7) of the said consent terms is important for our purpose, which is reproduced hereinbelow :

"7. Both the parties hereby agree that the Petitioner shall only be entitled to withdraw the said amount of Rs.35,00,000/- from this Hon'ble Court, after withdrawal of the Domestic Violence Application bearing No. 143/DV/2017 pending before the Ld. Metropolitan Magistrate 44th Court, at Andheri, Mumbai and after Quashing of the FIR bearing No. 217/2017 dated 8.7.2017 registered by the Versova Police Station."

5. Learned counsel for the Petitioner submitted that an amount of Rs.35 lakh is already deposited by the Petitioner with the Family Court at Bandra. In support of his submission, he has produced copy of of the receipt at Exhibit-"D" to the petition. In pursuance of the understanding arrived at between the parties, which is referred to hereinabove, the parties have now approached to this Court for quashing the subject criminal case by consent.

6. Accordingly, Respondent No. 2 has filed an affidavit

dated 4th October 2018. She has confirmed in the said affidavit what is stated hereinabove. In paragraph 8, she has given no objection to quash the subject criminal case.

7. 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 subject FIR /criminal proceedings initiated by her against the Petitioner.

8. 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].

9. 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.

10. In the light of the 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. Accordingly, petition is made absolute in terms of (a). the Respondent No. 2 is at liberty to withdraw the amount of Rs.35 lakh deposited by the Petitioner with the Family Court at Bandra. Since the subject criminal proceedings is quashed and domestic violence application referred to above is already withdrawn by Respondent No.2, the Family Court at Bandra shall pay the said amount of Rs.35 lakh to Respondent No. 2 on her such request.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]