

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICAITON NO. 175 OF 2019

Sourabh Harkut and Others. ..Applicants.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Prashant Badade for the Petitioner.

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

Mr. J. G. Damani for Respondent No. 2.

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

Date : March 12, 2019.

P. C. :

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

2. The Applicants have approached this Court invoking the jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 seeking to quash and set aside the FIR bearing No. CR No. 617 of 2018, registered with Kandivali Police Station, Mumbai. The said FIR is registered at the instance of Respondent No.2 against the Applicants herein, for the offence punishable under sections 3, 4, 498A, 323, 504, 506 and 406 read with 34 of the Indian Penal Code, 1860.

3. Applicant No.1 and Respondent No.2 got married in the year 2016. Rest of the Applicants are the relations of Applicant No.1 and in-laws of Respondent No. 2. The matrimonial disputes between the parties gave rise to the filing of civil as well as criminal proceedings and the present FIR is one of them.

4. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into above FIR, with the help and intervention of family members, friends and well-wishers, the parties amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present application is filed for quashing the above FIR by consent of Respondent No. 2. They submitted that consent terms are already filed before the Family Court at Bandra, Mumbai in Petition No.A-134 of 2018. Under the said consent terms, parties agreed to obtain divorce by mutual consent under section 13(1)(b) of the Hindu Marriage Act, 1955. By way of settlement, Applicant No.1 has agreed to pay to Respondent No.2, a sum of Rs.25 lakh towards the one time lumpsum permanent alimony. The Pay Order for the said amount drawn in the name of Respondent No.2 is kept in ESCROW account with Mr. Ghanshyam Rander, Mediator. Respondent No.2 is entitled for receiving this amount after the FIR is quashed and the divorce by mutual consent is granted.

5. In terms of the understanding arrived at between the

parties, Respondent No. 2 has filed her affidavit dated 12th March 2019. In paragraph 2, she has given no objection to quash the said FIR. 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 initiated by her against the Applicants.

6. 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].

7. 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 except ultimately burdening the Criminal Courts which are already overburdened.

8. 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 FIR. Accordingly, application is allowed in terms of prayer clause (b).

9. At this stage, Mr. Damani, learned counsel for

Respondent No.2 pointed out that during the investigation of subject FIR, Kandivali Police Station has recovered some golden ornaments from the Applicants under a Panchnama dated 16th December 2018. Copy of the said Panchnama is annexed at page 29 of this application. Mr. Damani submitted that since the subject FIR is quashed, those belongings be directed to be given to Respondent No. 2. Mr. Badade, the learned counsel for the Applicants submitted that his clients have no objection if the golden ornaments are given to Respondent No. 2. In these circumstances, we direct Kandivali Police Station to hand over the said golden ornaments to Respondent No. 2 within two days from today.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]