

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1348 OF 2018

Nitesh Shivji Kesarwani & Others. ..Applicants.
Versus
State of Maharashtra & Others. ..Respondents.

Mr. Madan Gupta for the Applicant.
Ms. Sangita Shinde, APP for the Respondent-State.
Mr. Ganesh M. Tippanwar for Respondent No. 2.

Coram : RANJIT MORE &
N. J. JAMADAR, JJ.
Date : **August 13, 2019.**

P. C. :

1. Heard the learned counsel for the Applicant, the learned APP for the Respondent-State and the learned counsel for Respondent No.2. By this application filed under section 482 of the Code of Criminal Procedure, 1973, the Applicants seek to quash the FIR bearing CR.No.I-118 of 2018 registered with Bhiwandi City Police Station, on the allegation of commission of the offences punishable under sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No.2 herein.

2. Applicant no.1 and Respondent No.2 are husband and wife and the rest of Applicants are the relations of Applicant No.1 and in-laws of Respondent No.2. The matrimonial discord between the parties gave rise to the filing of civil as well as criminal proceedings against each other and the present FIR is one of them.

3. The learned counsel appearing for the respective parties submitted that pending investigation into above FIR, with the help and intervention of relatives, well-wishers and friends the parties have amicably settled their disputes and 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.

4. Respondent No. 2 has filed an affidavit dated 13th August 2019. In paragraph 5 of the said affidavit, she has stated as under :

"I say that the matter / case is resolved peacefully and amicably between us, namely, between Pooja Nitesh Kesarwani and 1) Nitesh Shivji Kesarwani, 2) Shakuntala Shivji Kesarwani, 3) Sonia (Sanjana) Mahesh Kesarwani 4) Bhagwan Kesarwani and 5) Shaymadevi V. Guptanad the dispute which is purely based on misunderstanding, however, it has been mutually settled amongst us in the interest of justice and in the interest of peace and harmony to prevail in society."

. Further, in paragraph 6 of the affidavit she has made a statement that Applicant No.1 and Respondent No.2 have decided to obtain divorce by mutual consent and have accordingly filed Divorce Petition No. 905 of 2018 before the Civil Judge, Senior Division, Bhiwandi at Thane. Further statement is

made that consent divorce petition is scheduled to come up before the Civil Judge, Senior Division, Bhiwandi, Thane on 19th August 2019. Applicant No.1 and Respondent No.2 make solemn statement that they will remain present before the said Court on 19th August 2019 and will co-operate with each other in obtaining divorce by mutual consent.

5. Parties through their counsel make a joint statement that by way of full and final settlement towards the maintenance claim of Respondent No.2, Applicant No.1 has agreed to pay an amount of Rs.2.50 lakh to Respondent No.2. Applicant No.1 has accordingly prepared the demand draft and handed it over to Respondent No.2. Respondent No.2 acknowledges the receipt of the same through her advocate.

6. Applicant No. 1 and Respondent No. 2 are present in the Court. They state that they will abide by the said consent terms and will co-operate with each other. Statement accepted as an undertaking to this Court.

7. Respondent No.2, who is personally present before the Court, on specific query made by us, 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 against the Applicants.

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.”

9. 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].

10. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of FIR / 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.

11. 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 against the Applicants. Accordingly, application is allowed in terms of prayer clause 4(i).

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]