

Mohd. Faisal Akbar Kapadia and Others ...Petitioners
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Bhavesh Thakur, for the Petitioners
Ms. Neesha Varghese, for Respondent No. 2.
Mrs. M.H. Mhatre, APP for Respondent-State.
Ms. Afreen Faisal Kapdia, Respondent No. 2 present.

CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.

DATE : SEPTEMBER 07, 2021

JUDGMENT (Per N.J.Jamadar,J.)

. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1979 (the Code) is filed to quash and set aside the proceeding in C.C. No.354/PW/2020 pending on the file of learned Metropolitan Magistrate, Andheri Court, Mumbai arising out of First Information Report No. 265 of 2018 for the offences punishable under sections 498A, 406 and 506 of Indian Penal Code, 1860 (the Penal Code) registered with Oshiwara police station, Mumbai.

3. The marriage of respondent No. 2 was solemnized with first informant on 15th November, 2016. It seems that the marriage was afflicted with discord. Multiple proceedings were filed, including the F.I.R No. 18 of 2018 with the allegations of cruelty, criminal misappropriation and intimidation.

4. Mr. Thakur, learned counsel for the petitioners and Ms. Varghese, learned counsel for respondent No. 2 make a joint statement that in the intervening period on account of intervention of the elders and well wishers disputes between the petitioners and respondent No. 2 have been amicably resolved. Consent terms have been executed between the parties. The respondent No. 2 thus, does not wish to prosecute the petitioners any further.

5. The respondent No. 2 appeared before the Court. She is identified by Ms. Varghese, learned counsel for respondent No. 2. We have interacted with respondent No. 2. she informed the Court that she has decided to resolve the disputes with the petitioners voluntarily. There is no coercion or duress. Consent terms have been executed. In accordance with the consent terms, petitioner No. 1 has paid amount to her and they have also decided to part ways amicably. The proceeding is filed before the Family Court for

dissolution of the marriage in accordance with the customary separation (खुला). A copy of the consent terms and Memorandum of Understanding (Exhibit C) is annexed to the petition.

6. In the light of the aforesaid submission, statements and stipulations in the consent terms, we have perused the allegations in the F.I.R. It appears that in the wake of matrimonial dispute, multiple proceeding were filed by the parties. The genesis of the alleged offence is the marital discord. The parties have amicably resolved all the disputes and decided to give quits to the multiple proceeding. They have also agreed to amicably part ways and move on in life. Continuation of the prosecution, in such circumstances, would be futile exercise.

7. In the case of *Gian Singh vs. State of Punjab*¹, the Three Judge Bench of Supreme Court considered the relative scope of the provisions contained in Section 482 and Section 320 of the Code and expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

“61. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to

1 (2012) 10 Supreme Court Cases 303.

dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

8. The aforesaid principles apply with equal force to the facts in the case at hand. The genesis of the offence is in matrimonial disputes. The parties have worked out a comprehensive settlement. It is very unlikely that respondent No. 2 would support the prosecution and thus the chances of the prosecution ending in conviction are extremely remote. Continuation of prosecution would cause prejudice not only to the petitioners but to respondent No. 2 as well. It would thus amount to abuse of the process of the Court.

9. For the foregoing reasons, to secure the ends of justice and prevent the abuse of the process of the Court, we are persuaded to

allow the petition. Hence, the following order.

ORDER

- 1] The petition stands allowed.
- 2] The proceeding in C.C. No.354/PW/2020 pending on the file of learned Metropolitan Magistrate, Andheri Court, Mumbai arising out of First Information Report No. 265 of 2018 stands quashed and set aside.
- 3] Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)