

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPEAL NO.768 OF 2018
WITH
CRIMINAL APPLICATION NO.930 OF 2018
IN
CRIMINAL APPEAL NO.768 OF 2018***

Asmita Sachin Sonone @ Asmita M. Kalal ...Appellant/Applicant
Versus
1. The Registrar, Family Court, Pune
2. Sachin Dasharath Sonone
3. The State of Maharashtra ...Respondents

Mr. Chetan Alai, for the Appellant/Applicant.

Ms. Rebecca Gonsalvez, for the Respondent No.1.

Ms. Meghna A. Gowalani, for the Respondent No.2.

Mr. A. R. Patil, A.P.P for the Respondent No.3 – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 10th AUGUST, 2021

P.C. :

1. At the outset, learned counsel for the appellant seeks leave to amend the appeal. Leave granted. Amendment to be carried out during the course of the day.

2. Heard learned counsel for the parties.

3. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Ms. Gonsalvez, waives notice on behalf of Respondent No.1, Ms. Gwalani waives notice on behalf of respondent No.2 and learned APP waives notice on behalf of the Respondent No.3–State.

4. By this appeal, the appellant has impugned the order dated 11th May 2018, passed by the learned Judge, Family Court No.2, Pune, below Criminal M. A. No.35 of 2016, by which the learned Judge directed the Registrar of the Family Court, Pune to draft and file a criminal complaint as against the appellant for committing perjury for the offences punishable under Sections 193 of the Indian Penal Code r/w Section 195 and 340 of the Code of Criminal Procedure and as such seeks quashing and setting aside of the said order as well as quashing of the criminal complaint (Criminal Complaint No.2621 of 2018) filed pursuant to the said order in the Court of the learned Chief Judicial Magistrate, Pune.

5. The appellant and the respondent No.2 are husband and wife. The respondent No.2 – husband had filed divorce proceedings as against the appellant - wife in the Family Court at Pune. Even the appellant - wife

had filed proceedings under Section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate First Class, Nashik Road, Nashik, as well as Domestic Violence proceedings before the learned Magistrate, Nashik, as against the respondent No.2 – husband.

6. It is not in dispute that the Family Court, Pune, had passed a decree of divorce in favour of the respondent No.2 - husband, which was challenged by the appellant - wife in this Court. It appears that when the matter was before the Family Court, Pune, the respondent No.2 - husband filed an application as against the appellant – wife for initiating an enquiry as against her, under Section 340 of the Code of Criminal Procedure. Pursuant thereto, the learned Family Court Judge passed the impugned order dated 11th May 2018, directing the Registrar, Family Court, Pune to draft and file a criminal complaint as against the appellant for committing perjury.

7. Learned Counsel for the appellant submit that during the pendency of the appellant's appeal (against the decree of divorce in this Court) the parties i.e. the appellant and the respondent No.2, settled their dispute amicably and filed Consent Terms in the said Family Court Appeal and that the said Family Court Appeal was disposed of by this Court in

terms of the Consent Terms tendered by the parties. The said order is dated 27th October 2020. Learned Counsel for the appellant - wife has tendered a xerox copy of the said order dated 27th October 2020 passed by the Division Bench of this Court (Coram: K.K. Tated & N.R. Borkar, JJ.) in Family Court Appeal No.43 of 2017. Learned counsel for the appellant – wife further submits that the FIR lodged by the appellant as against the respondent No.2 - husband and in-laws was also quashed by the Division Bench of this Court (Coram : S. S. Shinde & M. S. Karnik, JJ.) vide order dated 14th December 2020. Learned Counsel for the appellant - wife has also tendered a xerox copy of the said order dated 14th December 2020 passed by the Division Bench of this Court. He submits that in view of the amicable settlement between the parties, the direction given by the Family Court vide the impugned order, to the Registrar, Family Court, Pune, to register a complaint as against the appellant be quashed and set aside and consequently the criminal complaint filed in the Court of the learned Chief Judicial Magistrate, Pune.

8. Learned Counsel for the respondent No.2 has filed an affidavit of the respondent No.2 - husband stating therein that he has withdrawn all the allegations made by him against the appellant and that he does not intend to contest the criminal complaint filed by the Registrar, Family

Court, Pune, pursuant to the order dated 11th May 2018, in view of the amicable settlement between the parties. The respondent No.2 - husband in his affidavit has stated that he has no grievance against the appellant and has consented to withdraw all the allegations voluntarily including quashing of Criminal Complaint No. 2621 of 2018, pending before the learned Chief Judicial Magistrate at Pune.

9. Ms. Gonsalvez, appearing on behalf of the respondent No.1 vehemently opposes grant of any relief. She submits that irrespective of the fact that the appellant and the respondent No.2 are husband and wife, the facts do not warrant quashing of the impugned order.

10. Perused the papers. Admittedly, the appellant is the wife of the respondent No.2. The appellant got married to respondent No.2 on 11th December 2010, at Nashik. After marriage, the appellant started residing with the respondent No.2 i.e. Sachin Sonone from 12th December 2010 to 26th December 2010. As the appellant had to complete BCS final examination, she went to her father's house at Nashik. It appears that soon thereafter i.e. from May 2011, quarrels started between the appellant and the respondent No.2, pursuant to which, respondent No.2 initiated divorce proceedings as against the appellant in the Family Court, Pune. The

appellant also filed a Maintenance Application before the Judicial Magistrate First Class, Nashik as well as proceedings under the Domestic Violence Act in the Nashik Court, as against the respondent No.2. It appears that maintenance was awarded by both the Courts i.e. by the Family Court as well as the Magistrate Court, Nashik. It appears that maintenance was awarded by the Courts, as according to the appellant she did not have a job. It was the respondent No.2's case that the appellant was employed and that she had suppressed the same. Hence, the respondent No.2 - husband filed an application being Criminal M. A. No.35 of 2016 (Exhibit – 20) before the Family Court with a prayer for taking action against the appellant for perjury under Section 340 of the Code of Criminal Procedure. The said application was opposed by the appellant – wife. In the said application, it was urged that there was no proof that the appellant had committed an offence under Section 193 of the Indian Penal Code for perjury. The learned Judge, Family Court, after considering the cross examination of the appellant in the divorce proceedings observed that there is *prima facie* record to believe that the appellant has committed criminal perjury punishable under Section 193 of Indian Penal Code r/w Section 195 and 340 of the Code of Criminal Procedure and accordingly vide order dated 11th May 2018 directed the Registrar of the Family Court, Pune to draft and file a criminal complaint

as against the appellant for committing perjury for the offences punishable under Sections 193 of the Indian Penal Code r/w Section 195 and 340 of the Code of Criminal Procedure, before the Court of Chief Judicial Magistrate, Shivajinagar, Pune. Pursuant thereto, Criminal Complaint No.2621 of 2018, was filed as against the appellant.

11. It appears that in the Family Court Appeal No.43 of 2017 filed in this Court, both the appellant and respondent No.2 filed Consent Terms in this Court. This Court (Coram: K.K. Tated & N.R. Borkar, JJ.) vide order dated 27th October 2020 accepted the said Consent Terms and disposed of the Family Court Appeal. As per the said Consent Terms the appellant and the respondent No.2 agreed to withdraw all complaints given against each other; they also undertook to withdraw proceedings filed against each other. The Consent Terms also record that the dispute was settled by a one time settlement i.e. the respondent No.2 was to give the appellant alimony of Rs.12,00,000/- and the marriage was dissolved between the parties.

12. In clause – F of the Consent Terms, the respondent No.2 had undertaken to withdraw all complaints lodged against the appellant and had also undertaken to give his no objection to quash the criminal complaint

filed against the appellant including the proceedings before the learned Chief Judicial Magistrate Court at Pune. In view of the Consent Terms, FIR lodged by the appellant was also quashed as against the respondent No.2.

13. No doubt, it is true that merely because the respondent No.2 had consented to withdraw the criminal complaint would not be a ground to quash the complaint initiated at the instance of the Family Court as against the appellant, for having committed perjury. However, the present facts are peculiar, inasmuch as, the parties involved are husband and wife. Admittedly, all proceedings between them have been quashed/withdrawn. Admittedly, action was taken by the learned Family Court Judge on an application made by the respondent No.2 for initiating action under Section 340 Cr.PC, as against the appellant as the appellant -wife had suppressed that she was working. The learned Family Court Judge whilst directing the registration of a complaint against the appellant recorded his *prima facie* satisfaction whilst initiating action against the appellant. It is only in the facts of the present case, having regard to the relationship between the parties and the quashing of all proceedings between the parties that this Court is inclined to allow the aforesaid appeal. No doubt, any false statement made by any litigant cannot and ought not to be condoned or

countenanced. Ordinarily, the impugned order directing registration of a complaint would have been taken to its logical end, however, as noted above, it is only in the peculiar facts of the present case, that the appeal is being allowed.

14. Accordingly, the appeal is allowed and the impugned order dated 11th May 2018, passed by the learned Judge, Family Court No.2, Pune, below Criminal M. A. No. 35 of 2016, directing the Registrar, Family Court, Pune, to lodge a complaint against the appellant, is quashed and set aside and consequently the Criminal Complaint No.2621 of 2018, pending before the learned Chief Judicial Magistrate at Pune, is also quashed.

15. It is made clear, that this order has been passed in the peculiar facts of this case and that the aforesaid order shall not be treated as a precedent.

16. Rule is made absolute in above terms.

17. In view of the aforesaid, the Criminal Application No.930 of 2018, does not survive and the same is also disposed of.

18. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.