

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

CRIMINAL APPLICATION NO. 647 OF 2021

Siddhivinayak Umesh Virdhe

..Applicant.

Versus

The State of Maharashtra & Anr.

..Respondents

WITH

CRIMINAL APPLICATION NO. 27 OF 2021

Priyanka Amit Bhat & Ors.

..Applicants.

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Sarang Aradhye for Applicants in both Applications.

Mr. Ashutosh A. Kumbhkoni, Advocate General is present in Court.

Ms. A. S. Pai, P. P. a/w. Mr. K. V. Saste, APP for State/Respondent No.1.

Ms. Sayali Deshmukh, Respondent No.2 with Rajendra Manohar Deshmukh, present in person.

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 21 DECEMBER 2021

P.C. :

. Heard the learned counsel for the Applicants and the learned APP. Taken up for disposal.

2. The Respondent No.2 is present in the Court and she is appearing in person along with her father Rajendra Manohar Deshmukh who is practicing advocate at Madha, District Solapur. Considering the affidavit tendered by the Respondent No.2 and that Shri. Deshmukh is a practicing advocate, we have permitted Respondent No.2's father to represent her.

3. The learned counsel for the Applicants and the Respondent No.2 jointly request that the F.I.R. filed by the Respondent No.2 be quashed as the Respondent No.2 has given her consent and Affidavit to that effect is filed.

4. There are two Applications seeking to quash the same F.I.R. Application No. 647 of 2021 is filed by the husband of the Respondent No.2. Application No. 27 of 2021 is filed by the Applicant No.1 sister-in-law, Applicant No.2 brother of father-in-law, Applicant No.3 father-in-law and Applicant No.4 mother-in-law of the Respondent No.2. The Respondent No.2 filed an F.I.R. alleging mental and physical cruelty by the Applicants and that she was subjected to demands of dowry.

5. The learned counsel for the Applicants and the Respondent No.2. state that the divorce petition has been filed bearing Marriage Petition No. 117 of 2021 in the court of Civil Judge, Senior Division, Pandharpur, wherein, consent terms have been executed. It is stated that, in the light of the same, the dispute is

settled.

6. Considering this statement made on oath and in person before us, we find that the case for exercise of extraordinary jurisdiction of this Court is made out. The dispute led to filing of an F.I.R. is a matrimonial dispute which is now resolved. It does not have repercussion on the society at large.

7. There is however a wider issue. We note that very large number of applications and writ petitions are filed in this Court for quashing of F.I.R. filed under Section 498A of Indian Penal Code, on the ground that the parties have settled their dispute. These proceedings are then quashed by the High Court in its extraordinary jurisdiction. We had requested the learned Advocate General to assist the Court to ascertain whether Section 498A of IPC can be made compoundable with permission of the Court. We were of this *prima facie* opinion, in the light of the fact that the State of Andhra Pradesh by amendment in the Code of Criminal Procedure by Act of 11 of 2003 has amended Section 320 of the Code of Criminal Procedure and inserted Section 498A of the IPC in the table appended to Section 320 of Code of Criminal Procedure.

8. Learned Advocate General accepted that the State of Andhra Pradesh had already made the offence under Section 498-A of IPC a compoundable offence with permission of the Court with certain stipulations.

9. Shri Aradhye, learned counsel for the Applicants has ably assisted the Court on legal position at short notice. He places before us the extracts from the Law Commission Reports and Committees. The relevant discussion in 243rd Report of the Law Commission is as follow:

“ There is preponderance of opinion in favour of making the offence under S,498-A compoundable with the permission of the court. Even those (individuals, officials and organizations) who say that it should remain a non-bailable offence, have suggested that the offence should be made compoundable, subject to the permission of court. Some States, for e.g., Andhra Pradesh have already made it compoundable. The Supreme Court, in the case of Ramgopal v. State of M. P. in SLP (Crl.) No. 6494 of 2010 (Order dt. July 30, 2010), observed that the offence under S, 498-A should be made compoundable. However, there is sharp divergence of views on the point whether it should be made a bailable offence. It is pleaded by some that the offence should be made bailable at least with regard to husband’s relations and in respect of the cases failing under second part of the Explanation Clause (b) to Section 498-A.

As regards compoundability, the Commission has given a comprehensive report (237th Report) under the title of “Compounding of IPC Offences”. The Commission recommended that the offence under Section 498A should be made a compoundable offence with the permission of Court. The Commission has suggested the inclusion of the following sub-section in S.320 Cr.PC:

After the application for compounding an offence under S.498A of Indian Penal Code is

filed and on interviewing the aggrieved woman, preferably in the Chamber in the presence of a lady judicial officer or a representative of District Legal Services Authority or a counselor or a close relation, if the Magistrate is satisfied that there was prima facie a voluntary and genuine settlement between the parties, the Magistrate shall make a record to that effect and the hearing of application shall be adjourned by three months or such other earlier date which the Magistrate may fix in the interests of Justice. On the adjourned date, the Magistrate shall again interview the victim woman in the like manner and then pass the final order permitting or refusing to compound the offence after giving opportunity of hearing to the accused. In the interregnum, it shall be open to the aggrieved woman to file an application revoking her earlier offer to compound the offence on sufficient grounds.”

(emphasis supplied)

In the 154th Report of the Law Commission also there was a clear recommendation to make the offence compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that it should be made compoundable. In the Committee of Petitions (Rajya Sabha) Report presented on 7th September 2011 regarding this issue, following were the recommendations under the heading “Making the offence under Section 498-A IPC compoundable” :

“The Committee notes that the offence under Section 498A IPC is essentially a fallout of

strained matrimonial relationship for which there might be various considerations. Since there can be various causes leading to an offence under Section 498A IPC and parties to the marriage could be responsible for the same in varying degrees, it would be appropriate if the remedy of compromise is kept open to settle a matrimonial dispute. In this context, the Committee feels that in case of any marital discord which has reached the stage of a complaint under Section 498A IPC, it would be better if the parties have the option of a compromise where after they can settle down in their lives appropriately for a better future rather than diverting their energies negatively by pursuing litigation. The Committee recommends to the Government to consider whether the offence under Section 498A IPC can be made compoundable.”

(emphasis supplied)

These recommendations are eloquent. It would be in the interest of all the parties concerned if the offence under Section 498-A of IPC is made compoundable with permission of the Court with certain safeguards.

10. When there is a discord between husband and wife, it leads to various litigations. Invariably prosecutions are launched under Section 498-A of IPC; the proceedings under the Protection of Women from Domestic Violence Act; the proceedings for maintenance under Section 125 of the Code of Criminal Procedure,

divorce proceedings etc. On most occasions, all these proceedings are generally pending in different cities and, therefore, it is difficult and expensive for the parties to approach the High Court for getting the FIR and other proceedings under Section 498-A of IPC quashed under Section 482 of Cr.P.C. If the offence under Section 498-A of I.P.C. is made compoundable with permission of the Court, the Magistrate can interact with the parties. Parties can apply to the local Courts. Quite often Applications under the Protection of Women from Domestic Violence Act are also filed from the same dispute, which are triable by the Magistrate. If Section 498A of IPC is made compoundable the same Court can settle the dispute comprehensively.

11. The parties can save expenses, time and energy in approaching the High Court. It will also free up the already crowded docket of this court. Most of these connected proceedings can be put to rest and the parties can resume normal life. It would be in the interest of the parties in such matters if the offence is made compoundable with permission of the Court. Therefore, we are of the opinion that the Government of Maharashtra should consider this aspect and consider making the offence under Section 498-A of IPC compoundable under Section 320 of Cr.P.C., with permission of the Court, as was done by the State of Andhra Pradesh.

12. The learned Advocate General assured the Court that the

State will ascertain whether the State of Maharashtra will also consider amendment to the Schedule appended to Section 320 of Code of Criminal Procedure to include Section 498A of the IPC as a compoundable offence with the leave of the Court. We hope and trust the State of Maharashtra will take positive steps in this regard.

13. Reverting to the Applications at hand, in the light of what is discussed above, the Applications are allowed in terms of prayer clause (b) in both the Applications.

14. Copies of this order be sent to the office of learned Advocate General and learned Public Prosecutor.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)