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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.787 OF 2013

Pawankumar Prakashrao Desai And Ors. .. Applicants

v/s.

The State of Maharashtra And Anr. .. Respondents

....

Ms. Apurva Thipsay, i/b. Sanjay Gawde, for the Applicants.

Mrs. P.P. Shinde, APP, for State.

....

CORAM: NITIN JAMDAR &
G.A. SANAP, JJ.

DATE : 20 SEPTEMBER 2021.

P.C:-

Heard learned Counsel for the Applicants and learned APP
for the State.

2. The Application is pending since the year 2013. This application is filed for quashing of FIR No.323 of 2012 filed against the Applicants by Respondent No.2 with Respondent No.1 in respect of offences punishable under Sections 498A, 323, 406, 506, r/w. 34 of IPC. Applicant No.1 is the husband of Respondent No.2. Applicant No.2 is the mother-in-law and Applicant Nos. 3 and 4 are the sister-in-law and brother-in-law of Respondent No.2.

3. On 5 December 2013, notice was issued to Respondent No.2. It was directed that if final report of charge-sheet is not filed, the same shall not be filed and the investigation be proceeded. The application came up on board on 1 March 2017, when in view of the statement of the learned Counsel for Respondent No.2 that he is not representing Respondent No.2, fresh notice was issued to Respondent No.2. Then on 21 March 2018, again, a notice was issued to Respondent No.2. Thereafter, on 21 December 2018, following order came to be passed and the proceedings before the trial court in furtherance of the FIR was stayed:

“1 Though respondent No. 2 has been served more than once after Court order dated 21/12/2018, she has chosen not to appear. This Application filed in the year 2013 is for quashing action under section 498A and other sections of Indian Penal Code initiated by her. Proceedings before the Trial Court are already stayed by this Court.

2 In this situation, as this Court has already permitted charge-sheet to be placed on record, we grant applicants time of two weeks more to place it on record.

3 Interim orders to continue.

4 List on 6/12/2019.

5 The parties to note that Court may dispose of the matter finally on the next date, if it is otherwise convenient to the Court.”

4. On 6 December 2019, following order came to be passed:

“1] Heard learned counsel for the applicants and learned APP. Learned counsel for the applicants states that after orders of this Court dated 8th November, 2019, the limited grievance being pressed into service is only about quashing of FIR and consequential charge-sheet.

2] The FIR has been registered in the year 2012 for offences punishable under Sections 498A, 323, 406, 504, 506 r/w 34 of the Indian Penal Code.

3] Nobody appears for Respondent No.3-Complainant. It appears that she has been served and chosen not to appear. Learned counsel for Applicants states that she has been served more than once and her Advocate has also taken discharge. Leave is sought to place on record Decree of Divorce passed by the Competent Court.

4] In this situation, we grant leave to place on record the said Decree of Divorce. List for further consideration on 13th January, 2020. Parties to note that the Court may pass final orders on that date.”

5. Learned Counsel for the Applicants has drawn our attention to the divorce decree dated 6 May 2017 placed on record in view of the order passed on 6 December 2019. Learned Counsel for the Applicants states that no instructions have been received from the Applicants.

6. Respondent No.2 is not present before the Court. Prima facie, it appears to us that the dispute is settled and Respondent No.2 most likely will not support the prosecution. However, since the learned Counsel for the Applicants does not have any instructions nor Respondent No.2 is present, appropriate course of action would be to

vacate the interim order and permit the Applicants to approach the trial court in light of the decree of divorce and obtain suitable orders in that regard.

7. The application is, accordingly, disposed of with the above liberty.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)