

JPP

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

CRIMINAL WRIT PETITION NO. 5486 OF 2019

Shahabuddin Qureshi and Ors.

... Petitioners

V/s.

State of Maharashtra and Ors.

... Respondents

Ms. Tahera Qureshi for the Petitioners

Ms. S.D. Shinde, APP for the Respondent - State

Ms. Kamini Yadav i/b. Rehana for the Respondent No.3

Digitally
signed by
JYOTI
PRAKASH
PAWAR
Date:
2021.12.23
17:49:17
+0530

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

DATE : 20 DECEMBER 2021

P.C. :-

Heard the learned Counsel for the parties. Taken up for disposal forthwith.

2. This Petition is filed for quashing of the FIR lodged by the Respondent No.3 – Sabina Mujahid Hussain Qureshi. The FIR is lodged under Section 345, 452, 323, 143, 147, 149, 504 and 506 of the Indian Penal Code.

3. The learned Counsel for the Petitioners and the Respondent No. 3 state that the main dispute that was between Parveen Qureshi i.e. the Petitioner No. 2 here and her husband Sajid Qureshi has been resolved and the incident narrated in the present FIR is a follow up of that matrimonial dispute. Considering the request is made for quashing of the FIR by consent, we have examined the contents of the statement of the Respondent No.3 on the FIR. The Respondent No.3 has stated that on 24 September 2017 when she had gone to work, she received a message that her elder brother's wife Parveen, her sister Shaheen Qureshi and her husband Shabuddin Qureshi, sister-in-law Niyamul Qureshi and children of her elder sister have entered the house and quarreling and are trying to take goods from the house. When they were confronted, the Petitioners entered into an altercation and based on this altercation and that clothes were torn in the scuffle, the FIR was lodged under the aforesaid sections.

4. As stated earlier, the genesis of the incident is the matrimonial dispute between Parveen Qureshi and her husband Sajid Mujahid Qureshi. In the Writ Petition No. 5491 of 2019 which Sajid and his family members had filed for quashing of the FIR lodged by Parveen under Section 498-A, was allowed by order passed today by consent, Sajid and Parveen are divorced by mutual consent. They are residing separately and are re-married.

5. The incident in the present FIR is after the divorce proceeding where the Petitioners stated to have entered the house of the Respondent No.3 to take away goods, which according to the Petitioners, were goods belonging to Parveen. A consent affidavit is filed by the Respondent No.3, where the Respondent No.3 has stated as under :-

“1. At the outset I state that the contents of the above Writ Petition are true and correct and I reiterate what has been stated therein.

2. I say that I am the original complainant in the FIR registered against the Petitioners at Nayanagar Police Station being I-274/2017 for offences punishable under Section 354, 452, 323, 143, 147, 504, 506 of I.P.C. after filing of charge sheet came to be numbered as R.C.C. No. 74 of 2018, pending before the 8th Joint Civil Judge, J.D.J.M.F.C. Court at Thane.

3. I say that Petitioner No.2 Parveen Qureshi Was my sister-in-law, Petitioner No.2 has file FIR against my family members and me at Nayanagar Police Station being I-174/2015 for offences punishable under Section 498-A, 403, 323, 504, 506 r/w. 34. After filing of charge-sheet came to be numbered as R.C.C. No.1953 of 2016.

4. I say that after registration of the said FIR, sincere efforts for reconciliation were made by elders of both families and our Jamat and as a result we have settled out dispute amicably.

5. *I say that my brother Sajid Qureshi and Petitioner No.2 has taken divorce by Khula from Qazi on 05.12.2018.*

6. *I say that in view of the above I do not wish to continue the present case before the Petitioners as I wanted to focused on my family and Petitioner No.2 has already taken divorce and are not married with someone else, and continuation of present proceeding will be harassment to Petitioner No.2 and her family members. Moreover, the Petitioner No.3 i.e. Salman Qureshi wanted to peruse higher studies at abroad, and present proceeding which going to trouble him in the same.*

7. *I say that I have agreed not to pursue the said FIR lodged by me at Nayanagar Police Station being I-274/2017 for offences punishable under Section 354, 452, 323, 143, 147, 504, 506 of I.P.C.*

8. *I say similarly Petitioner No.2 has agreed not to peruse FIR registered against me and my family members at Nayanagar Police Station being I-174/2015 for offences punishable under Section 498-A, 403, 323, 504, 506 r/w. 34. After filing of charge-sheet came to be numbered as R.C.C.No.1953 of 2016.*

9. *I say that there is no exchange of money etc. for withdrawing present FIR/RCC as main matter is settled way back in 2018, between my brother and Petitioner No.3, and they are now divorced.*

10. *I have also agreed not to take any further action against the Petitioners in pursuance to the said FIR/RCC No.74/2018 lodged against them and I am ready for quashing of the said FIR/R.C.C.*

11. I hereby give my full and absolute consent and No Objection for quashing the said RCC No.74/2018 registered by me at Nayanagar Police Station being I-274/2017 for offences punishable 354, 452, 323, 143. 147. 504. 506 of I.P.C. pending before the 8th Joint Civil Judge, J.D.J.M.F.C. Court at Thane.

12. I therefore pray that the above Writ Petition be allowed in terms of prayer clause (a) and this Hon'ble Court be pleased to quash the FIR/RCC case registered by me at Nayanagar Police Station being C.R. No.I-274/2017 for offences punishable under Section 354,452,323, 143, 147, 504, 506 of I.P.C. pending before the 8th Joint Civil Judge, J.D.J.M.F.C. Court at Thane."

The contents of the affidavit have been reiterated by the Advocate for the Respondent No.3 on instructions.

6. Having considered the contents of the FIR, the affidavit filed by the Respondent No.3 and the order passed in the Writ Petition No. 5491 of 2019 is clear to us that all these incidents are interconnected. They arose because of matrimonial dispute between Sajid and Parveen and since the main dispute is now resolved amicably and the parties are now living separately since many years, keeping the prosecution pending will in fact be an obstruction to the process by which peace is sought to be achieved in both the families. The nature of the allegation in the FIR will show that it is not an incident that affects the society at large. Considering this factors, we

are of the opinion that the case is made out for exercise of extraordinary jurisdiction to quash the FIR.

7. The Writ Petition is allowed in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Court be pleased to pass appropriate writ, order, direction, directing Respondent Nos.1 and 2 to quash and set aside the FIR No.I-274/2017 registered U/s. 354,452,323,143,147,504,506 of IPC dated 28/09/2017 and Charge Sheet No. 74 of 2018 on such terms and conditions this Hon’ble Court may deem fit and proper.”

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.