

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL APPLICATION NO. 2386 OF 2020

- 1] Yash s/o Rajesh Maheshwari,
Age : 32 years, Occu. Private Service,
R/o. Opposite BSNL Office, Flat No. 2,
Suraj Palace, G-2, Town Centre,
CIDCO Colony, S.O. Aurangabad.
- 2] Rajeshkumar s/o Jagdishprasad Maheshwari,
Age : 60, Occu. Business,
R/o. Opposite BSNL Office, Flat No. 2,
Suraj Palace, G-2, Town Centre,
CIDCO Colony, S.O., Aurangabad.
- 3] Rajni Rajesh Maheshwari,
Age : 56, Occu. Household,
R/o. Opposite BSNL Office, Flat No. 2,
Suraj Palace, G-2, Town Centre,
CIDCO Colony, S.O., Aurangabad. **Applicants..**

Versus

1. The State of Maharashtra
2. Priyanka w/o Yash Maheshwari,
Age : 30 years, Occu. Architect,
R/o. C/o. Anil Deokaran Kabara,
House No. 3-1-113, Kabara Niwas,
Near Amba Mata Mandir, Vajirabad,
Nanded. **Respondents...**

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Mr. N. K. Tungar h/f Mr. S. G. Jahagirdar, Advocate for the applicants

Mr. A. M. Phule, APP for respondent No. 1/State

Mr. V. C. Patil, Advocate for respondent No. 2

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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : OCTOBER 03, 2022

ORAL JUDGMENT [PER RAJESH S. PATIL, J.] : -

1] By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants are praying for quashing and setting aside of the F.I.R. bearing No. 381/2020 registered at Vajirabad Police Station, Nanded for the offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code and the consequent R.C.C. No. 298/2022 pending before learned Chief Judicial Magistrate, Nanded.

1.1] The applicants herein are the husband, father-in-law and mother-in-law respectively of respondent no. 2-informant.

FACTS : -

2.1] It is the case of respondent no. 2 in the FIR that the marriage between respondent no. 2 and applicant no. 1 was solemnized on 28.02.2017 at Aurangabad. They have a son, namely, Ayansh, from the said wedlock.

2.2] It is stated in the FIR that dowry was demanded from the father of respondent no. 2. All the applicants harassed the informant. The applicant abused and beaten up the informant/respondent no. 2 and drove her out of the house. Being fed up with the harassment and ill-treatment, the informant lodged report against all the applicants, which was registered as Crime No. 382/2020.

3.1] The applicants have stated in the Criminal Application that they live in a joint family. Applicant no. 2 has completed his M.M.A. after B.E. After the marriage of applicant no. 1 with
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respondent no. 2, they have been to Mauritius for honeymoon. On 28.03.2018, respondent no. 2 left the company of applicant no. 1 without the consent of the applicants and on 18.11.2018, she gave birth to a baby boy, namely, Ayansh.

3.2] It is further stated in the application that applicants tried to call her back to matrimonial home at Aurangabad but the efforts yielded no fruits. Therefore, the applicant no. 1 left with no option but to file a petition u/s 9 of the Hindu Marriage Act for restitution of conjugal rights on 21.09.2020. Subsequently, respondent no. 2 lodged report against all the applicants at Vajirabad Police Station for the offences referred to above. It is further stated that the respondent no. 2 at the instigation of her relatives from parental side are filing false complaints against the applicants. The FIR is maliciously instituted against the applicants with an ulterior motive for wreaking vengeance on the applicants.

4] Subsequently, the charge-sheet was filed and the same was culminated into Regular Criminal Case No. 298/2022, pending before the learned Chief Judicial Magistrate, Nanded.

SUBMISSIONS: -

5] I have heard Shri. N. K. Tungar, learned advocate for the applicants, Shri. A. M. Phule, learned APP for respondent no.1/State and Shri. V. C. Patil, learned counsel for respondent no. 2.

6] Learned counsel Shri. Tungar urged that since it is a case of matrimonial dispute and the parties have come to a compromise, no useful purpose will be served to drag both the sides to the court for the purposes of completing the formalities of the case and since the family wants to live happily together without any bickering, it is sgp

in the interest of justice to quash the proceeding pending against the applicants. He further submitted that the respondent no. 2 / informant has filed affidavit stating therein that the families of both applicant no. 1 and respondent no. 2 with the intervention of their close relatives sorted out the issues between them and that they have agreed to stay together and continue the marriage. The Petition filed by the applicant no. 1 for restitution of conjugal rights came to be allowed by the Id. Family Court, Aurangabad and in deference to the same, the parties have arrived at an amicable settlement. Respondent no. 2 also withdrew the P.W.D.VA. Application No. 31/2020 filed before the Id. Judicial Magistrate First Class, Nanded u/s 12 of the Protection of Women From the Domestic Violence Act, 2005, by filing a *purshis*. He therefore submits that it will be a wastage of precious time of the court to go into the niceties of trial as a ritual only when the fate of the case is decided at the very outset. The affidavit filed by respondent no. 2 thereby giving consent to quash the FIR and the proceedings arising therefrom, is annexed with this application.

7] The submissions advanced by learned counsel Shri. Tungar on behalf of the applicants are also countenanced by Shri. V. C. Patil, learned Counsel for respondent No. 2 and learned APP for respondent no. 1 / State.

ANALYSIS :

8] Cogitating over the submissions advanced by both the sides it is to be noted that the case relates to a matrimonial dispute. The interest of justice is to foster and cement the bondage of togetherness of the nucleus of the society that is the family. It will be hazardous to the society to force the parties to litigate over an issue in such matters especially when the parties have come to a
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compromise and they want to live a happy life. No doubt the matrimonial offences are a slur on our society and the legislature in its wisdom thought it proper to curb the menace of such type of matrimonial disputes with conviction but this does not mean that the interest of justice, which is supreme of all the laws and for which the courts exist to be also sacrificed at the altar of technicalities. If such a course of not permitting to compound the offences of matrimonial disputes are strictly adhered to by the courts, then it will be a dis-service to the society for the protection of which the courts exist.

9] We have carefully perused the affidavit filed by respondent no. 2 / informant thereby giving consent to quash and set aside the impugned FIR registered by her against the applicants.

10] In the case of **B.S. Joshi and others v. State of Haryana and another** 2003 (4) SCC 675, the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable. In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offence under Section 498A IPC is a non-compoundable offence, there should be no impediment in quashing the FIR under this section, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant.

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11] The Supreme Court in the case of **Gian Singh v. State of Punjab and Another** reported in 2012 (10) SCC 303 has held that, the criminal cases having overwhelmingly and predominantly 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 offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire disputes. In this category of cases, the High Court may quash the 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 the criminal case would put the 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. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

12] Thus, in this view of the matter, in the present case, when the matter has been settled by both the spouses and the relatives, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to them by not quashing the criminal case despite full and complete settlement and compromise with the victim. Hence, this is a fit case wherein the Court should exercise its inherent powers under Section 482 of the Code of Criminal procedure to quash the FIR and the further proceedings arising therefrom.

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13] The affidavit filed by respondent no. 2 on 08.04.2022 thereby consenting to quash the FIR and the further proceedings is taken on record and marked as 'X' for identification.

14] In the light of discussion in foregoing paragraphs, the criminal application is allowed in terms of prayer clause 'B' and 'B-1'.

15] F.I.R. vide C. R. No. 381/2020 registered against the applicants at Vajirabad Police Station, Nanded for the offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code and the consequent charge-sheet which culminated into R.C.C. No. 298/2022 pending before learned Chief Judicial Magistrate, Nanded are quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE