

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 831 OF 2018

Ankur Yogesh Padia & Another ..Petitioners.

Versus

The State of Maharashtra & Another. ..Respondents.

Ms. Saili N. Dhuru i/b Megha Bajoria for the Petitioner.

Mr. J. P. yagnik, APP for the Respondent-State (Respondent No. 1)

Ms. Rohini Wagh for Respondent No. 2.

CORAM: PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

Date: **February 15, 2022.**

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner Nos.1 and 3 (Petitioner No. 2 has expired during the pendency of petition as such Petitioner No.2 has been deleted from the array of petitioners.) Also heard learned APP appearing for the Respondent-State, i.e., Respondent No.1, and learned counsel appearing on behalf of Respondent No.2.

2. By way of present petition, the Petitioners have prayed for quashing and setting aside the first information report (FIR) bearing Crime No.454 of 2017 registered with Dahisar Police Station on the allegation of commission of offences punishable under sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860 as well

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as the proceeding arising out of the said crime/FIR.

3. The perusal of documents placed on record shows that marriage between Petitioner No.1 and Respondent No.2 was solemnised on 10th December 2009 at Mumbai. It seems that within a short span of matrimonial life, there were certain differences between the Petitioners and Respondent No.2. It is alleged that Respondent No.2 was subjected to ill-treatment and demands, hence Respondent No.2 lodged the subject FIR with Dahisar Police Station against the Petitioners on the allegation of commission of offences punishable under sections 498A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860.

4. The perusal of documents placed on record further shows that there is a parallel proceeding going on between Petitioner No. 1 and Respondent No. 2 in the Family Court. Though voluminous material is placed on record, it may not be necessary for us to refer to this material for the simple reason that the parties, i.e., Petitioner No. 1 and Respondent No. 2 have arrived at an amicable settlement and jointly prayed for quashment of the subject FIR.

5. Learned counsel appearing on behalf of Respondent No.2 submitted that parties have filed consent terms before the Family Court

for divorce by mutual consent. A copy of consent terms was tendered across the bar. The same is taken on record and marked "X" for identification. The perusal of these documents shows that Petitioner No. 1 and Respondent No.2 have agreed to withdraw all allegations made against each other. In the proceedings before family Court, they have further submitted that their willingness to convert the petition filed in family Court into a mutual consent divorce petition. There are certain terms making reference to the custody of an issue born out of the wedlock, namely, Kriyansh, who is now 8 years old and residing with the Petitioner-father. It is stated in the consent terms that Petitioner No.1 husband is ready to give Rs.16 lakh to the Respondent-wife towards the lumpsum alimony, full and final maintenance for the past, present and future on the date of decree of divorce. Then there is reference to the joint property and both the parties have agreed to sell that property before decree of divorce. The consent terms are duly signed by Petitioner No.1 and Respondent No.2 before the marriage counsellor, Family Court at Bandra, Mumbai. Though the affidavit in support of consent terms is not filed in this Court, Respondent No.2 – Swati Padia, who is personally in this Court. submitted that consent terms are settled between the parties on her free-will and consent without there being any pressure or coercion on her. She submitted that she is having no objection for grant of prayer made by the Petitioners in the petition for

quashment of FIR registered against them at her instance. The statement of Respondent No.2 is accepted as undertaking to this Court.

6. The Apex Court in B. S. Joshi vs. State of Haryana reported [AIR 2003 SC 1386] has held that in the event of settlement of matrimonial dispute, the FIR under Section 498A can be quashed, even though the said offence is not compoundable in terms of Section 320 of the Cr.P.C. The relevant observations of the Apex Court are contained in Paras 14 and 15 which are reproduced herein below:

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XXA of Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

Similar view has been taken by the Full Bench of this Court in Abasaheb Yadav Honmane vs. State of Maharashtra [2008(5) LJ.Soft 46].

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. The parties have settled the matter, as they have decided to keep harmony between them to enable them to live with peace and love. The compromise records that they have no grudge against each other and the complainant has specifically agreed that she has no objection if the FIR in question is quashed.

8. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive, except ultimately burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of the Petitioners in the instant case will amount to abuse of the process of Court and therefore it is in the fitness of things to quash the FIR in question in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands

that the dispute between the parties is put to an end and peace is restored.

9. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the FIR in question. Accordingly, petition is made absolute in terms of prayer clause (a).

[Surendra P. Tavade, J.]

[Prasanna B. Varale, J.]