

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1611 OF 2015

Hamza Karim Memon & Others.

..Petitioners.

Versus

The State of Maharashtra & Another.

..Respondents.

Mr. Javed R. Patel for the Petitioner.

Ms. Rebecca Gonsavles, Advocate appointed by the Court to assist the Court.

Mr. K. V. Saste, APP for the Respondent-State.

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

Date : **February 15, 2022.**

P. C. :

1. The Petitioners are before this Court seeking quashment of the first information report (FIR) bearing Crime No.22 of 2015 dated 27th January 2015 registered at Dongri Police Station, Mumbai on the allegation of commission of the offences punishable under sections 498A, 406 read with 34 of the Indian Penal Code, 1860.

2. Our attention was invited to the order of this Court dated 1st March 2017. Perusal of the said order shows that on the said date, Respondent No.2 was present before this Court in-person, however, she was not represented by any advocate. On noticing this fact as well as the fact that Respondent No.2 is having a child of three years and visualising that Respondent No.2 may be facing some difficulties, this Court

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appointed Advocate Ms. Rebecca Gonsavles to assist this Court for arriving at a legal solution of the issue.

3. The perusal of documents placed on record shows that marriage between Petitioner No.1 and Respondent No.2 was solemnised on 2nd November 2011. For a period of one year, Respondent No.2 was happy in her matrimonial life. Some time in the year 2014, the couple was blessed with a baby girl. It seems that soon after the birth of daughter, the Petitioners started ill-treating Respondent No.2, certain demands of money were advanced to Respondent No.2. As Respondent No.2 was unable to bear the ill-treatment for a longer period, she approached Dongari Police Station and lodged the FIR, which is sought to be quashed by the present petition.

4. It seems that though initially parties have arrived at a settlement by agreeing to certain terms and the consent terms settled between the parties were placed on record on 22nd February 2017. It seems that unfortunately again there was a discord between the parties.

5. Ms. Rebecca Gonsalvez, advocate appointed by this Court submitted before this Court that during the passage of time, the parties have successfully arrived at a settlement due to the intervention of elder members in the family; and fresh consent terms are arrived at between the parties on 15th February 2022, which are duly signed by all the petitioners and Respondent No.2, as well as by the advocates appearing

in the matter. The said consent terms are taken on record and marked "X" for identification. Clause No.2 of the said consent terms reads thus :

"2. Agreed and declared that the talaq said to be given by Petitioner No. 1 on 3/8/2014 is not valid, as the same was not given by following the procedure required under law."

6. An assurance is given by Petitioner Nos.2 to 5 that they will not interfere and this assurance is recorded in clause no.4 of the consent terms. Terms settled between the parties amicably are supported by the affidavit filed in this Court by Respondent No.2. It is specifically stated in paragraph 4 that Petitioner No.1 and Respondent No.2 started residing together as husband and wife in June 2016 and have been residing together even since. Further, it is stated that they are residing with daughters Ayesha and Kashifa separately from Petitioner Nos.2 to 5. Respondent No.2 has given no objection for quashing of the FIR bearing Crime No. 22 of 2015 registered with Dongri Police Station.

7. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the FIR in question instituted at her instance against the Petitioners.

8. 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].

9. 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. Further, both the parties have undertaken not to indulge in any litigation against each other and withdraw all the complaints pending between the parties before the court. As they do not intend to proceed with any criminal case against each other, on that basis the submission of the petitioners is that the continuance of the criminal proceedings in the aforesaid FIR will be a futile exercise and mere wastage of precious time of the court as well as investigating agencies.

10. 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 FIR alive except ultimately burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforesaid 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 subject FIR 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.

11. 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.]