

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1206 OF 2021

Tarbez Farook Shaikh and others. ...Applicants.
Versus
The State of Maharashtra & Another. ..Respondents.

Mr. A. Karim Pathan for the Applicant.
Ms. A. S. Pai, PP for the State (Respondent No. 1).
Mr. Avendra Kumar for Respondent No. 2.

CORAM: PRASANNA B. VARALE &
ANIL S. KILOR, JJ.
Date: **January 7, 2022.**
[Video Conferencing Mode]

P. C. :

1. Heard learned counsel appearing on behalf of the Applicants, learned PP for the Respondent-State and learned counsel appearing on behalf of Respondent No.2. Respondent No.2 is also present before this Court by way of her virtual appearance along with advocate representing her.

2. At the instance of Respondent No.2, the first information report (FIR) bearing Crime No. 101 of 2015 was registered at BKC Police Station, Bandra (East), Mumbai for the commission of offences punishable under sections 498A and 406 read with 34 of the Indian Penal Code, 1860. On lodgment of FIR, the investigating agency was set into motion, and by completing the formalities of investigation, the charge-

sheet came to be filed before the learned Metropolitan Magistrate, 9th Court, Bandra, Mumbai and the proceedings are numbered as C.C. No. 1366/PW/2016.

3. Learned counsel appearing on behalf of the Applicants submitted that during the pendency of application, Applicant no.1-the husband and Respondent No.2-the wife decided to part their ways by an amicable settlement. An affidavit-in-reply is filed in this Court at the instance of Respondent No. 2 on 6th January 2022. It is stated in the said affidavit-in-reply that Respondent No.2 does not wish to proceed in the matter and wish to compound the same since the difference and disputes between the couple have been amicably resolved. She has further stated in her affidavit-in-reply that she carries no grievance or grudge or ill feeling towards the Applicants. Then there is reference made in paragraph 5 of the affidavit that the parties have executed the consent terms. Copy of the consent terms is also made available to this Court, which is duly signed by the Applicants, Respondent No.2 as well as counsel for Respondent No.2. It is stated in the consent terms that Applicant No.1-the husband and Respondent No.2-the wife agreed to execute a *Khulanama* mutually. It is further stated that the parties mutually agreed not to file any other civil or criminal case, FIR, complaint case, suit against each other and they further agreed that they shall not

interfere in each other's life, directly or indirectly. The consent terms also refers to the custody of minor child, namely, Master Uzair Tarbez Shaikh and it is stated that the permanent custody of minor child Uzair shall be with Respondent No.2-mother Shireen Tarbez Shaikh, and Applicant no.1 shall not claim custody of the child in future.

. As Respondent No.2 was present before this Court by virtual mode, a query was put to her as to whether the terms of document under the caption consent terms are agreed to by her and whether she has willingly accepted all these terms, and the reply of Respondent No.2 was in affirmative.

4. As there was no reference to any provision of either maintenance of Respondent No.2 or the maintenance of minor child, a specific query was put to Respondent No.2, to which she replied that she has waived the claim for maintenance. She further volunteered that since the year 2016, she has been carrying on a professional activity of running the cosmetic business. It is also submitted by Respondent No.2 that with the assistance of two associates, she spends nearly eight hours per day towards her professional activity.

5. At this juncture, it would be apposite to refer to the decision of Apex Court in B. S. Joshi vs. State of Haryana reported [AIR

2003 SC 1386], wherein the Apex Court has held that in the event of settlement of matrimonial dispute, the FIR under Section 498A of IPC can be quashed, even though the said offence is not compoundable in terms of Section 320 of the Cr.P.C. 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].

6. 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.

7. 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 criminal proceedings pending except 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 Applicants 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 and proceeding 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.

8. 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 criminal proceedings in question.

9. Considering the above referred facts and particularly the willingness of parties and the terms agreed between the parties including a term that Respondent No.2 is not desirous to continue with the proceedings initiated at her instance on lodgment of FIR, the application is allowed in terms of prayer clause (c).

[Anil S. Kilor, J.]

[Prasanna B. Varale, J.]