

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1031 OF 2018

Ankim Kantilal Gada and Ors. ...Applicants.
Versus
The State of Maharashtra & Another. ..Respondents.

Mr. Bharat Bhatia for Applicants.
Mr. K.V. Saste, APP for Respondent-State. (Respondent No.1)
Mr. Ganesh Patil for Respondent No.2.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

Date : March 7, 2022.

P. C. :

1. Heard. Learned Counsel for the Applicants, learned APP for the State and learned counsel for Respondent No.2. The Applicants are before this Court seeking quashment of the first information report (FIR) No.11 of 2018 registered at Dombivali Police Station, at the instance of Respondent No.2 on the allegation of commission of offences punishable under sections 498A, 323, 406 and 506 read with 34 of the Indian Penal Code, 1860.

2. Perusal of the material placed on record shows that marriage between Applicant No.1 and Respondent No.2 was solemnised on 9th February, 2015. There was exchange of certain gold ornaments in marriage. For the initial period of matrimonial life, Respondent No.2 was

treated well by the Applicants, but soon thereafter Respondent No.2 was subjected to ill-treatment and harassment. Being aggrieved by the said ill-treatment and harassment, Respondent No.2 approached the concerned Police Station and lodged the report. It is revealed from the submissions of learned counsel that the one civil proceeding was initiated in the Court of 9th CJJD, Thane, as a petition for dissolution of marriage under section 13(b) of the Hindu Marriage Act, 1955. The couple thought it fit to part their ways by an amicable settlement. The terms between the parties were agreed and settled. Learned Court below considered the very fact of desire of the parties to part their ways and granted decree of divorce by mutual consent. Copy of the decree is placed on record and marked "X" for identification. It would be necessary to refer to relevant and material terms referred to in the decree, namely clauses 5, 6 and 7, which are as under :

5. The petitioners state that due to differences of opinion temperamental incompetence petitioners are not getting well right from the beginning and as such they have been again living separately since last more than 1 year i.e., 15.02.2015. The relation between them having become strained and their nature, temperament and disposition becoming incomplete, they are not in a position to live together. The petitioners state that the several attempts made by common friends, elderly persons of both the families and well wishers to bring about the reconciliation proved fruitless.

6. The petitioners state that they are unable to live together and there is no probability or possibility of their living together as husband and wife. They have been living separately since last more than 1 year. They have

thus decided and agreed to take divorce by mutual consent and get their marriage dissolved by consent.

7. The petitioners have settled their claim mutually and Petitioner no.1 and Petitioner no.2 have exchanged their ornaments, articles, belonging at the time of filing of this petition, i.e., today. That petitioners hereby state that now there is no claim of whatsoever in nature of either parties hereof and they have exchanged their articles intersay. That Petitioner no. 2 shall have no claim of whatsoever nature against Petitioner no.1 or against properties either movable or immovable belonging to Petitioner no.1 after dissolution of the marriage, i.e., after passing the decree of divorce by this Hon'ble Court."

3. Respondent No.2, who is personally present in this Court, has also filed an affidavit submitting that the matter is amicably settled between the parties and she is not interested to prosecute the applicants any further. It is also stated by Respondent no.2 in her affidavit that she is having no objection if the FIR/proceedings against the applicants is quashed.

4. On specific query put to Respondent No.2, as to whether the terms settled between parties are at her will and wish and without there being coercion or pressure to Respondent No.2, Respondent No.2 replied in the negative.

5. The Apex Court in B. S. Joshi vs. State of Haryana [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."

6. 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.

8. It can safely said that 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 applicants 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.

9. 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 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 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.

10. In the light of 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, application is allowed in terms of prayer clause (b).

[S. M. Modak, J.]

[Prasanna B. Varale, J.]