

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 978 OF 2024

Rushik Rajendra Shah & Ors.

..Applicants

Versus

Ruchika Rushik Shah & Anr.

..Respondents

Mr. Shyamrishi Pathak a/w. Gayatri P. a/w. Jyoti Barai for Applicants.

Mr. Anand S. Shalgaokar, APP for State/Respondent.

Ms. Rimpal Trivedi a/w. Harshada Bhanushali for Respondent No.1.

**CORAM : SARANG V. KOTWAL &
DR. NEELA GOKHALE, JJ.**

DATE : 13 NOVEMBER 2024

PC :

1. Leave to amend to correct the typographical errors.

Amendment shall be carried out by the learned counsel for the applicants forthwith.

2. Heard Mr. Shyamrishi Pathak, learned counsel for the Applicants, Mr. Anand Shalgaokar, learned APP for the State and Ms Rimpal Trivedi, learned counsel for the Respondent No.1.

3. This is an application for quashing of the F.I.R. registered

vide the C.R.No.40 of 2017 with Malabar Hill police station and the consequent charge-sheet filed before the J.M.F.C., 40th Court, Girgaon vide the C.C.No.437/PW/2017, for the offences punishable under sections 498A, 325, 323, 307, 504 r/w. 34 of the I.P.C. and U/s.3 and 4 of the Dowry Prohibition Act.

4. The F.I.R. is lodged by the Respondent No.1 (hereinafter referred to as the 'informant'). The Applicant No.1 is her husband. The Applicant Nos.2, 3 and 4 are the brother, father and mother of the Applicant No.1. The Applicant No.5 is wife of the Applicant No.2.

5. The F.I.R. mentions that the informant got married with the Applicant No.1 on 25.02.2011. It is mentioned that the informant's family was not very happy with the alliance, but at her instance the marriage took place. After the marriage, she started residing with the Applicant Nos.1 to 4. There are allegations that the Applicant No.4 used to taunt her on petty issues. All the applicants used to abuse her. The Applicant Nos.2 and 5 got married subsequently. There is a reference to other criminal cases

against the Applicant Nos.1, 2 and 3. On all such occasions, the informant's father had paid some money to help the applicants' family financially. In spite of that, the informant was physically and mentally harassed. The informant delivered her son on 20.11.2014. On one occasion, she had consumed sleeping pills out of frustration, for which, she had to take treatment. The F.I.R. mentions one particular instance dated 16.04.2017, wherein, she was assaulted by the Applicant No.1 on her nose causing bleeding from the nose. She called her parents. When they came to her matrimonial house, even her father was slapped by the Applicant No.3. There are allegations that, because of the assault she suffered nose fracture. Her *stridhan* was retained in their joint locker by the applicant No.4. On these allegations, the F.I.R. was lodged. The investigation was carried out and the statements of various witnesses were recorded. Those witnesses included the informant's parents, uncles, cousins and an employee in her matrimonial house. All these statements are similar to the allegations in the F.I.R. There is a report from the St. Elizabeth's Hospital showing that the informant had suffered fracture of her

nasal bone. On this basis the charge-sheet was filed.

6. During pendency of these proceedings, the informant had also initiated the proceedings under the Protection of Women from Domestic Violence Act and also the divorce proceedings. While the divorce proceedings were pending, the matter was settled between the parties and the consent terms were filed before the Family Court at Bandra, Mumbai, in M.J. Petition No.A655 of 2022. Vide the Judgment and Decree dated 23.10.2024, divorce by mutual consent was granted to the parties. Pursuant to the consent terms, the proceedings under the D.V. Act were withdrawn. The informant has filed her Affidavit in this Court giving her no objection for quashing the present charge-sheet. The Affidavit is taken on record.

7. We have heard the parties. The informant is present in the Court. She is identified by her counsel. She submitted that, she is relying on the consent terms and the affidavit filed in the Court today. She also submitted that, she has no objection for quashing of the proceedings which are the subject matter of the present

application.

8. We have considered this situation and we have perused the consent terms and the affidavit. The consent terms mention that the divorce proceedings were filed by the informant on merits. It was agreed that the matrimonial petition would be converted into a petition for divorce by mutual consent U/s.13B of the Hindu Marriage Act. There is a reference in paragraph-3 of the consent terms that the parties shall take steps within 10 days of filing of the consent terms in the Family Court by filing quashing petition before this Court in connection with the aforesaid C.R. number. The consent terms are quite elaborate and make a provision that the custody of the child was to remain with the informant. Paragraph-16 of the consent terms mentions that the husband shall have no objection if the informant wanted to marry in future and if her future husband wanted to adopt their son. There is a clause mentioned in paragraph-11 reserving liberty to the parties to initiate fresh litigation for non compliance of the consent terms; including initiation of perjury proceedings. Paragraph-28 mentions that the parties shall not interfere in each others' personal life after

the decree of divorce. All these consent terms are quite elaborate. They also provide for the consequences if those terms are not complied with. The consent terms specifically take care of the future of the child. Therefore, it would be in the best interest of both the parties if the application is allowed and the proceedings are quashed.

9. Learned APP pointed out that, in this case, the charges are already framed.

10. Learned counsel for the Applicants submitted that the charges were framed and then they were altered. That particular charge was challenged by the applicants before the Sessions Court and those proceedings are still pending.

11. In this situation, we considered whether we can exercise the jurisdiction U/s.482 of the Cr.p.c. and under Article 226 of the Constitution of India for quashing the proceedings on the ground of settlement. In that regard, a reference can be made to the Judgment of the Hon'ble Supreme Court dated 29.09.2021 passed in Criminal Appeal No.1489 of 2012 in the case of Ramgopal &

Anr. Versus The State of Madhya Pradesh with Criminal Appeal No.1488 of 2012 in the case of Krishnappa & Ors. Versus State of Karnataka. The Hon'ble Supreme Court had considered the facts in both these appeals. The facts regarding Criminal Appeal No.1489 of 2012 show that the accused in that case were convicted by the learned J.M.F.C., Ambah for the offences punishable under sections 294, 323 and 326 r/w. 34 of the I.P.C. with the maximum sentence of three years. That order was challenged before the Sessions Court at Ambah. During pendency of that Appeal, the matter was settled between the parties. The learned Sessions Judge permitted compounding of the offence U/s.294 and 323 r/w. Section 34 of the I.P.C. and maintained the conviction U/s.326 r/w.34 of the I.P.C.; as the said section was 'non-compoundable' within the scheme of Section 320 of the Cr.p.c. However, quantum of the sentence was reduced to one year. The accused preferred a Criminal Revision Application before the High Court of Madhya Pradesh for compounding of the offence based on the compromise entered into between the parties. However, the High Court of Madhya Pradesh did not accede to that prayer reiterating that the

offence was non-compoundable. However, the duration of the imprisonment was further reduced to that which was already undergone by the accused. The accused further challenged that particular order of the Madhya Pradesh High Court before the Hon'ble Supreme Court seeking compounding of the offence U/s.326 of the I.P.C. In this background, the Hon'ble Supreme Court considered the scope of power U/s.482 of the Cr.p.c. Paragraph-13 and 19 of the said Judgment in that behalf are relevant and, therefore, we are relying on those paragraphs. The said paragraphs read thus:

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard

and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors. Reported in (2014) 6 SCC 466 and in State of Madhya Pradesh vs. Laxmi Narayan & Ors. reported in (2019) 5 SCC 688*.

19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: **(i)** Nature and effect of the offence on the conscious of the society; **(ii)** Seriousness of the injury, if any; **(iii)** Voluntary nature of compromise between the accused and the victim; & **(iv)** Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

12. The Judgment of the Hon’ble Supreme Court considers the powers U/s.482 of the Cr.p.c. post conviction. Therefore, even at this early stage, after framing of the charge the same powers

under the same parameters can be used, particularly when the recording of evidence has not yet started. In this case, the Applicants have not challenged the charges framed by the trial court on merits of the matter. The quashing of the proceedings is sought on the ground of settlement between the parties. Therefore, we are exercising our powers U/s.482 of the Cr.PC. and under Article 226 of the Constitution of India to secure ends of justice, in the interest of the parties and to prevent abuse of process of law in view of the settlement.

13. In this particular case before us, we are keeping future of the parties and, in particular, that of the child before us, as paramount consideration. The consent terms takes care of the future of the child and they provide consequences if the terms of the consent terms were violated which would be damaging the future of the Respondent No.1, as well. Though, there are allegations of assault attracting Section 325 of the I.P.C., the Respondent No.1 has decided to give no objection for quashing of the proceedings. Therefore, continuation of the criminal proceedings would not serve any purpose. The parties have

decided to lead their life separately in peace in future. Therefore, in the interest of justice, in the given facts and circumstances of this particular case, we are inclined to allow this application.

14. Hence, the following order:

O R D E R

- i) The F.I.R. registered vide the C.R.No.40 of 2017 with Malabar Hill police station and the consequent charge-sheet filed before the J.M.F.C., 40th Court, Girgaon vide the C.C.No.437/PW/2017, are quashed and set aside.
- ii) The Application is disposed of.

(DR. NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)