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**(2006) 07 BOM CK 0020**  
**In the Bombay High Court**  
**Case No : Criminal W.P. No. 1738 of 2005**

Kiran Tulshiram Ingale

APPELLANT

Vs

Anupama P. Gaikwad and Others

RESPONDENT

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**Date of Decision :** 25-07-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 482  
Hindu Marriage Act, 1955 — Section 13B  
Penal Code, 1860 (IPC) — Section 406, 498A  
Probation of Offenders Act, 1958 — Section 4(1)

**Citation :** (2006) CriLJ 4591 : (2007) 2 RCR(Criminal) 842

**Hon'ble Judges :** S.A. Bobde, J;D.G. Deshpande, J

**Bench :** Division Bench

**Advocate :** N.P. Deshpande, for the Appellant; S.J. Rairkar and V.B. Konde-Deshmukh, APP, for the Respondent

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## Judgement

D.G. Deshpande, J.—Heard advocates for the petitioner and Respondent No. 1. Petitioner is the husband and Respondent No. 1 is the wife. A case was instituted against the petitioner u/s 498A of the Indian Penal Code. He came to be convicted by the trial Court. The matter went in appeal. Before the appellate Court, the matter was settled between the parties. The petitioner and respondent No. 1 obtained divorce by mutual consent. Respondent No. 1 agreed not to press for the petitioners conviction. The appellate Court maintained the conviction of the petitioner and gave him benefit of provisions of Probation of Offenders" Act.

2. Firstly the petitioner has filed Criminal Revision Application No. 255 of 2004 against the order of the Sessions Judge because no appeal was maintainable. When this Revision Application came up before learned single Judge, Justice Khanwilkar passed an order referring the Revision Application to a larger Bench.

3. Thereafter, apprehending that the Judges deciding the reference, may raise an objection that there is no application u/s 482. Therefore, the petitioner filed an application being Criminal Application No. 4079 of 2005 in the Criminal Appellate

Jurisdiction of this Court and, the prayers therein were, for setting aside the judgment dated 3rd March, 2004 passed by the 3rd Extra Joint District Judge and Additional Sessions Judge, Pune in Criminal Appeal No. 125 of 2001 and for quashing and setting aside C.R. No. 128 registered at Swargate Police Station u/s 482 of the Criminal Procedure Code. This Criminal Application appears to have been filed on 27th June, 2005.

4. At or about the same time, i.e. on 25th July, 2005, in anticipation that if the Division Bench or the Bench to which the reference is made comes to the conclusion that this cannot be done in Criminal Application, the petitioner has filed this petition, being Writ Petition No. 1738 of 2005 challenging the constitutional validity of Section 320(9) of the Cr.P.C. By this writ petition the petitioner prayed for a declaration that the provisions of Section 320(9) of the Code of Criminal Procedure are unconstitutional to the extent the same do not permit compounding of offence u/s 498-A of the Indian Penal Code and, second prayer was that the petitioner may be permitted to compound the conviction recorded by the Additional Sessions Judge, Pune in Criminal Appeal No. 125 of 2001.

5. We had given number of opportunities to the advocate for Respondent No. 1 to keep Respondent No. 1 present. But he failed to do so. Ultimately, the matter was heard by us.

6. The petitioner has annexed copy of the judgment of the JMFC, Pune by which the petitioner was convicted and sentenced to suffer R.I. for three years and also to pay fine of Rs. 5,000/ and 1/d. to suffer further R. I. for three months. He has also annexed copy of the judgment given by the Mrd Extra Joint District Judge, Pune in Criminal Appeal No. 125/2001 filed by the petitioner against his conviction. In this judgment, the appellate Court had recorded reasons in para 3 and it is stated as under:

It must be mentioned here that, today all the concerned parties are present before the Court, stating that the matter has been amicably settled between the husband appellant and wife complainant viz. accused No. 1 Kiran T. Ingale and complainant Smt. Anupama Kiran Ingale. They even have submitted their settlement before the Court, as per Exhibits 7 and 8. The offence being non-compoundable can not be compounded. However, certainly taking into consideration the circumstances of this case, benefit of probation u/s 4(1) of the Probation of Offenders" Act can be made available to the appellant"accused No. 1 who is admittedly first offender and entitled for such benefit.

Consequently, the conviction was confirmed but the sentence was converted to a Bond of Rs. 5,000/- as provided by the Probation of Offenders" Act of 1958.

7. The judgment of the trial Court is dated 16th August, 2001 and the Judgment of the appellate Court is 3rd March, 2004. In between, it is clear from the record and as pointed out by the advocate for the petitioner that the parties had moved to the Family Court No. 4, Pune by filing petition vide P. A. No. 281 of 2000 for

divorce u/s 13B of the Hindu Marriage Act. Though that petition was initially filed by the wife for divorce on the ground of cruelty, during pendency, both parties decided to dissolve the marriage by mutual consent and, therefore, the family Court, Pune, after being satisfied that the parties have satisfied the condition u/s 13B of the Hindu Marriage Act and since there is no legal bar, granted a decree of divorce in their favour. Consequently, by judgment dated 8 4-2002 the family Court, Pune dissolved the marriage by decree of divorce by mutual consent u/s 13B of the Hindu Marriage Act, 1955.

8. It will be therefore, clear and as pointed out by the advocate for the petitioner, that firstly there was conviction by the Magistrate, then there was a petition for divorce and in that petition consent decree was obtained; then appeal was heard by the Sessions Court and the Sessions Judge took note of intervening development and converted the conviction into a Bond under the Probation of Offenders Act, 1958.

9. In this background, the advocate for the petitioner contended that the criminal case should have been quashed by the Sessions Judge, but admittedly, the Sessions Judge had no power to do so, nor any power to compound the offence and, therefore, he has moved this Court. He prayed that either the criminal case be quashed or offence u/s 498A of the Indian Penal Code be allowed to be compounded.

10. Justice Khanwilkar in the Criminal Revision, arising out of the conviction of petitioner, as referred to above, did not agree with the view of the single Judge taken in the case of State of Maharashtra v. Madhu Bhisham Bhatia and Ors. reported in 2004 All MR (Crl) 1849 : 2004 Cri LJ 5072. According to Justice Khanwilkar, the single Judge misread the judgment of the Apex Court In B.S. Joshi's Case and, therefore, he thought it fit to refer the Issue to the Division Bench. He framed following two Issues:

(1) The decision of the Apex Court, in B.S. Joshi's case is not an authority to hold that offence u/s 498A of the Indian Penal Code is a compoundable offence, which can be compounded with the permission of the Court.

(2) Whether it is open for the High Court to quash the criminal action in exercise of Inherent powers even in a case which has ended with an order of conviction after trial.

11. In our opinion, the main issue before the Supreme Court was, whether to allow the matrimonial disputes to continue indefinitely causing hardship to both the parties; or whether in case parties come to a settlement, that settlement should be given approval and sanctity. In para 2 of B.S. Joshi and Others Vs. State of Haryana and Another, the Supreme Court observed as under:

The matrimonial disputes of the kind in the present case have been on considerable increase in recent times resulting in filing of complaints by the wife under Sections 498A and 406, IPC not only against the husband but his other

family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings of the First Information Report or complaint filed by the wife under Sections 498A and 406, IPC can the prayer be declined on the ground that since the offences are non-compoundable u/s 320 of the Code and, therefore, it is not permissible for the Court to quash the criminal proceedings or FIR or complaint.

Thereafter the Supreme Court considered 7 Judgments upon which the parties relied and then, after considering its own Judgment in *G.V. Rao v. L.H.V. Prasad* : 2000CriLJ3487 , and found that the observations made in that Judgment were apt and which were reproduced, are as under:

It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly extend which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about re-rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different Courts.

Then para 14 the Supreme Court observed as:

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.

These observations of the Supreme Court are very broad. In para 2, reproduced above by us, the Issue before the Supreme Court was, for quashing of criminal proceedings or FIR or complaint.

12. The single Judge felt that the powers of quashing cannot be exercised if the criminal proceedings have resulted in conviction, as in the present case. We are not in agreement with these observations. If the prime object of the Judgment of Supreme Court in *B.S. Joshi's* case is to allow the parties to settle their matrimonial disputes either way, then conviction, in our opinion, cannot and should not come in the way. It is a fact on record that the trial Court convicted the accused. The parties thereafter mutually obtained divorce. This fact was taken into consideration by the learned Sessions Judge. But he expressed his

inability to compound the offence u/s 498A of the Indian Penal Code because he had no powers to do so. He further granted benefit of Probation of Offenders Act to the petitioner.

13. Therefore, it is clear that firstly in this case the parties have compromised even after conviction and, the object of compromise to live happily, peacefully though separately after divorce. The Sessions Court has taken cognizance of this compromise and has reduced the conviction and altered it to a bond under the Probation of Offenders Act. Secondly, conviction by the first Court is not end of the matter and appeal therefrom is continuation of proceeding and if a revision is filed, in case conviction is maintained, altered, reduced, then the High Court in revision does get power to pass effective orders in consonance with the judgment of the Supreme Court. Conviction does not attain finality if the appeal is filed and, If the revision is filed against conviction by appellate Court, there also all issues become opened before the High Court.

14. Since the Supreme Court had approached this issue with a broader perspective and the Issue was whether it is permissible to quash criminal proceedings (Stress Added, or complaint or FIR and in our opinion, even the criminal proceedings can be quashed irrespective of whether there is conviction or otherwise. We, therefore, answer both the Issues as under:

Ans. to Issue No. 1 :- The decision of the Supreme Court gives powers to the High Court to permit compounding of matrimonial offences and the High Court has powers to quash the criminal proceedings or FIR or complaint.

Ans. to Issue No. 2 : Even in case of conviction, inherent powers can be exercised and criminal proceedings can be quashed.

15. In view of the aforesaid decision of the Supreme Court, we hold that the High Court, by exercising inherent powers, can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers of the High Court u/s 482 of the Criminal procedure Code. In view of this clear judgment of the Supreme Court we pass the following order:-

ORDER:

Reference stands answered accordingly.

The criminal proceedings against the petitioner so also his conviction by both the Courts below is hereby quashed in view of the mutual understanding, divorce and compromise between the husband and wife.

All the matters, therefore, stand disposed of accordingly.