

(2021) 07 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No.2363 Of 2021

Lavesh Amar Wadhwani And Another

APPELLANT

Vs

State Of Maharashtra And Another

RESPONDENT

Date of Decision : 03-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 34, 323, 498A, 506
Protection Of Women From Domestic Violence Act, 2005 — Section 12
Hindu Marriage, 1955 — Section 13B

Citation : (2021) 07 BOM CK 0026

Hon'ble Judges : S.S. Shinde, J;N.J. Jamadar, J

Bench : Division Bench

Advocate : Mahesh Kukreja, A.S. Pai, Prasad Kulkarni, Manushree @ Ritu L. Wadhwani

Final Decision : Allowed

Judgement

N.J.Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.
2. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 is filed to quash and set aside the Regular Criminal Case No. 858 of 2020 arising out of C.R. No. 689 of 2019 registered at Sadar Bazar police station, Solapur pending on the file of the Vishal Parekar, learned Chief Judicial Magistrate, Solapur, in view of the settlement arrived at between the petitioners and respondent No. 2- the first informant.
3. The factual backdrop can be stated in brief as under: a] The marriage of the petitioner No. 1 Lavesh was solemnized with respondent No. 2 Manushree on 10th March, 2019. The petitioner No.

2 is the mother of petitioner No. 1. Soon after marriage, the petitioners allegedly made unlawful demand of money for purchasing a house at Bangalore and to finance a business. The marital discord escalated. The respondent No. 2 was allegedly subjected to cruelty. Eventually, the respondent No. 2 lodged a report with Sadar Bazar police station, Solapur against the petitioners and Amarlal, the deceased father of petitioner No. 1, for the offences punishable under section 323, 498A, 506 read with 34 of the Penal Code, 1860.

b] An application under section 12 of the Domestic Violence Act, being PWDVA Application No. 43 of 2020, was also fled before the Court of Judicial Magistrate, Solapur.

c] The petitioners aver that, during the pendency of the aforesaid proceeding, with the intervention of the family members and well wishers, the petitioners and respondent No. 2 have amicably resolved the dispute. A petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act has been fled before the Family Court at Solapur. Hence, this petition for quashing of the above numbered proceedings.

4. The respondent No. 2 Ms. Manushree has sworn an affidavit. In the affidavit respondent No. 2 has made, inter alia, the following averments:

6] I say and submit that pursuant to the above we have further amicably resolved all the differences and disputes relating to marriage, stridhan etc. out of Court and myself as Respondent No. 2 have no claim against each other in any manner whatsoever. In view of the above consent under section 13-B of the Hindu Marriage Act before the Family Court at Solapur, Maharashtra in proceedings Family Court Divorce Proceeding No. 117 of 2020 and have submitted the above Memorandum of Mutual Understanding dated 30th August, 2020 and the same is pending for final orders.

7] I say and submit that in the said Divorce Application I have agreed that I will give no objection for quashing the above Regular Criminal Case No. 858 of 2020 in C.R. No. 689 of 2019 fled by Sadar Bazar Police station, Solapur, Maharashtra.

8] I say and submit that I do not want to proceed with the said Regular Criminal Case No. 858 of 2020 in C.R. No. 689 of 2019 fled against Vishal Parekar, the Petitioners and that I have no objection if this Court quashes the said Regular Criminal Case No. 858 of 2020 in C.R. No. 689 of 2019, which is pending before the Chief Magistrate's Court, Solapur, Maharashtra.

10] I hereby states and submits that I am filing this affidavit on the assumption that the Petitioner No. 1 will attend before the Family Court at Solapur on the next date in Family Court Divorce Proceeding No. 117 of 2020 and will give consent for mutual Divorce and it is agreed between the parties that neither of the parties will prolong their respective proceedings.

5. A copy of the Memorandum of Understanding dated 30th August, 2020 is annexed to the affidavit. Clause Nos. 4, 5 and 6 thereof read as under:

4] That, party No. 1 is giving D.D.No.000026 of HDFC Bank, Branch Maharaj Banda, Gwalior, MP dated 29/08/2020 of Rs. 5 lakhs to party No. 2 for one time maintenance and compensation after receiving the D.D. party No. 2 will not ask for any maintenance and compensation or any other amount in this relation in future.

5] That, any gift received by party No. 2 is with them only beside this any other gift received by party No. 1 in return to party No. 2 in front of witness. and his family, will be taken back by party No. 2, if required party No. 2 has to produce mutual consent for that.

6. The respondent No. 2 appeared before the Court through Vishal Parekar, P.A. video conferencing. Respondent No. 2 informed the Court that she has decided to amicably resolve the dispute on her own volition. There is no coercion or duress. The respondent No. 2 admitted the contents of the affidavit. She submitted that the matrimonial dispute is resolved in terms of the Memorandum of Understanding and the assertions in the affidavit.

7. It seems that the prosecution has its genesis in the marital discord. Eventually, with the intervention of elders and well wishers, the parties have amicably resolved all the disputes. They have decided to part ways. It is trite that the High Court would be justified in invoking the inherent jurisdiction under section 482 of the Code where the continuation of the prosecution would cause grave prejudice to the parties. The prosecutions arising out of matrimonial proceedings are one of the classes of cases in which the Court, taking note of the settlement between the parties, can quash the prosecution so as to advance the cause of securing ends of justice, and prevent the abuse of the process of the Court.

8. A profitable reference in this context can be made to the Vishal Parekar, judgment of the Supreme Court in the case of Gian Singh vs. State of Punjab¹, wherein a three Judge Bench of the Supreme Court, considered the relative scope of the provisions contained in Section 482 and Section 320 of the Code and expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

"61. But the criminal cases having overwhelmingly and predominately civil favour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and

complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

(emphasis supplied)

9. The aforesaid pronouncement squarely governs the case at hand. As indicated above, the prosecution had its 1 (2012) 10 Supreme Court Cases 303. genesis in the matrimonial dispute. The continuation of the prosecution, where the parties have settled all the disputes, would serve no fruitful purpose. The possibility of the prosecution ending in a conviction is extremely remote and bleak. On the contrary, the continuation of the prosecution would cause grave prejudice to the parties. Thus, to secure the ends of justice and prevent the abuse of the process of the Court, we are inclined to allow the petition. Hence, the following order.

ORDER

a] Petition stands allowed in terms of prayer clause (a) and (b).

b] Regular Criminal Case No. 858 of 2020 arising out of C.R. No. 689 of 2019 pending on the file of learned Chief Judicial Magistrate, Solapur, stands quashed and set aside. c] Rule made absolute in aforesaid terms.