

(2013) 09 BOM CK 0225

In the Bombay High Court

Case No : Criminal Application (Apl.) No. 421 of 2013

Manish

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3922

Hon'ble Judges : Z.A. Haq, J;B.R. Gavai, J

Bench : Division Bench

Advocate : A.G. Gharote, for the Appellant; R.S. Nayak, Assistant Public Prosecutor for Respondent No. 1 and Mr. Lubesh Meshram, for Resp. No. 2, for the Respondent

Judgement

Z.A. Haq, J.—Heard Mr. Gharote, learned Advocate for the applicants and Mr. Nayak, learned Additional Public Prosecutor for respondent No. 1 and Mr. Meshram, learned Advocate for respondent No. 2. Rule. Rule is made returnable forthwith.

2. Applicant No. 1 and non-applicant No. 2 got married on 11th July 2007. Because of growing differences between them, they realised that it will not be possible for them to cohabit and they decided to go for divorce amicably. But, in the meantime, non-applicant No. 2 made a complaint to the Police Station Amgaon, Distt. Gondia on 24th January 2008 alleging commission of the offences punishable under Sections 498A, 323, 506 read with Section 34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. Pursuant to the above complaint, the charge-sheet came to be filed against the applicants before the Magistrate. Applicant No. 1 filed Divorce Petition bearing No. A-359 of 2009 before the Family Court No. 2, Nagpur. In the proceedings, non-applicant No. 2 did not appear and the matter proceeded ex-parte and the decree for divorce is passed by the judgment dated 29th January 2010. After the decree of divorce is passed, applicant No. 1 remarried on 14th June 2010. In July 2010, applicant No. 1 received a notice from the Family Court, Nagpur of Misc. Judicial

Case No. 7 of 2010 filed by non-applicant No. 2 for setting aside ex parte decree of divorce. Non-applicant No. 2 had filed Criminal Application u/s 125 of the Code of Criminal Procedure praying for grant of maintenance, which was registered as Misc. Criminal Application bearing No. E-430 of 2010. Non-applicant No. 2 had filed another application, which was registered as Misc. Criminal Application bearing No. B-43 of 2010 for direction to return the Gift articles. The matters were referred to the Mediation and Conciliation Centre and the matters are amicably settled, on the following terms:--

(a).....

(b).....

(c).....

(d).....

(e) That, it is also decided and agreed between the parties that to avoid the technical difficulty they shall jointly file a petition u/s 482 of Criminal Procedure Code before Hon"ble High Court for quashing of FIR/Charge-sheet or getting permission to compromise the matter u/s 498A of IPC.

(f) In case of technical difficulty wife shall co-operate to the husband Manish for disposing off the said proceeding in favour of husband Manish and his relatives.

(g)....

(h)...

3. In this background, present application is filed by the applicants praying for quashing of the First Information Report, registered at Police Station, Ajani, Nagpur, vide Crime No. 25/2008 and the proceedings in Regular Criminal Case No. 2664/2008 before the learned Additional Chief Judicial Magistrate, Nagpur. Notices of this application were issued to the non-applicants.

4. Non-applicant No. 2 has filed submission solemnly affirmed by her on 2nd September, 2013. In the submission, non-applicant No. 2 has admitted the facts as stated by the applicants in the application. Non-applicant No. 2 has specifically stated that she has no objection for quashing the charge-sheet/F.I.R. in Regular Criminal Case No. 2664/2008 pending before the Additional Chief Judicial Magistrate, Nagpur.

5. Learned Advocate for the applicant has relied on the judgment of the Apex Court given in the case of Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another, in which it is laid down that even if the offences are non-compoundable in the case of matrimonial disputes and if the Court is satisfied that the parties have settled the same amicably and without any pressure for securing ends of justice, Section 320 of the Code of Criminal Procedure would not be a bar to exercise of power of quashing F.I.R., complaint or the subsequent criminal proceedings. In the present case as stated earlier, the

amicable settlement is arrived at between the parties in mediation proceedings and it is not the case of any of the parties that the amicable settlement was arrived at under pressure. Therefore, we conclude that F.I.R. registered at Ajani Police Station, Nagpur, vide Crime No. 25 of 2008 registered for the offences punishable under Sections 498A, 323, 506 read with Section 34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act and the proceedings in Regular Criminal Case No. 2664/2008 pending before the Additional Chief Judicial Magistrate, Nagpur, have to be quashed. Rule is made absolute in terms of Prayer Clause (B) of the application. Parties to bear their own costs.