

(2014) 01 BOM CK 0038

In the Bombay High Court

Case No : Criminal Application No. 1208 of 2013

Mohamad A.H. Johar Shaikh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 34, 406, 498(A)

Citation : (2014) ALLMR(Cri) 1770

Hon'ble Judges : V.L. Achliya, J;N.H. Patil, J

Bench : Division Bench

Advocate : Vikas Kapile, Advocate for the Appellant; M.H. Mhatre, A.P.P. for the State and Mr. Himashu Shinde, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

V.L. Achliya, J.—Rule. Rule returnable forthwith. By consent, taken up for final hearing. The applicants (original accused) have filed this application u/s. 482 of Cr.P.C. seeking quashing of F.I.R. vide C.R. No. 159 of 2013 dated 12th April, 2013, registered with Sakinaka police station for offences u/s. 498(A), 406 r/w. sec. 34 of IPC registered at the instance of respondent No. 2, on the grounds set out in detail in the application.

2. In nut shell, it is the say of applicants that the respondent No. 2 (orig. complainant) got married with applicant No. 1 on 4th November, 2011, as per the Muslim rites and customs prevailing in their community. After the period of about 3 months from the marriage, the differences crop up-between the respondent No. 2 and her in-laws. Since 17th February, 2012, respondent No. 2 residing separately in her parent's house. On 29th September, 2012, the respondent No. 2 (orig. complainant) gave birth to female child. Even after the birth of female child, the applicants have not visited respondent No. 2. She, therefore, lodged complaint with Sakinaka police station alleging cruelty,

harassment and misappropriation of her Stridhan. On the basis of complaint lodged, the police have registered offence vide C.R. No. 159 of 2013 u/s. 498(A), 406 r/w. sec. 34 of IPC as against the applicants. The applicants moved the Sessions Court for grant of anticipatory bail. The applicants were protected by ad interim order passed by Sessions Court. While the application for anticipatory bail was pending for final disposal, the elderly members and well-wishers of applicants as well as respondent No. 2 intervened and tried to amicably resolve disputes between them. On their intervention, the applicants and respondent No. 2 have entered into settlement. Accordingly, the consent terms were filed before the Sessions Court on 25th November, 2013. As per the settlement arrived, the applicant No. 1 and respondent No. 2 have decided to dissolve their marriage. Accordingly, on 17th November, 2013, the Talak has taken place between them and Talaknama to that effect was also drawn between the applicant No. 1 and respondent No. 2. It was also decided that the applicants and respondent No. 2 would take necessary steps for quashing the F.I.R. registered against the applicants vide C.R. No. 159 of 2013. In view of the settlement of matrimonial dispute, the applicants have approached this Court under sec. 482 of Cr.P.C. to invoke its inherent jurisdiction and to quash the F.I.R. registered vide C.R. No. 159 of 2013 dated 12th April, 2013, with Sakinaka police station u/s. 498(A), 406 r/w. sec. 34 of IPC at the instance of the respondent No. 2.

3. The respondent No. 2 has appeared in the matter alongwith her advocate and filed affidavit in reply. She has supported the case of the applicant for quashing the F.I.R.

4. We have heard the learned Advocates for the applicants as well as respondent No. 2 and the learned A.P.P. for the State. The learned Advocate for applicants has submitted that offences u/s. 498(A) of IPC is non-compoundable and in view of amicable settlement arrived between the applicants and respondent No. 2, no fruitful purpose would be achieved by prosecuting the applicants and hence prayed for quashing the F.I.R. registered against the applicants.

5. In the case of *Gian Singh Vs. State of Punjab and Another*, the Apex Court has laid down the broad guidelines to be followed while exercising the powers u/s. 482 of Cr.P.C. The Apex Court has held as follows:

61. The power of the High Court in quashing a criminal proceeding or F.I.R. or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences u/s 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences

of mental depravity or offences like murder, rape, dacoity,- etc. cannot befittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact of society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour 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, the High Court may quash the 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 the criminal case would put the 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 the 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.

Having examined the facts of the present case, in the light of the broad guidelines laid down by the Apex Court in the case of *Gian Singh Vs. State of Punjab and Another*, , we are of the view that it is a fit case to exercise power u/s. 482 of Cr.P.C. to quash the F.I.R./Complaint registered against the applicants. The subject matter of the dispute is personal in nature and it relates to matrimonial dispute. The parties have resolved all of their disputes. The applicant No. 1 has given Talak to the respondent No. 2. The issue in respect of custody of the child was also settled between the parties. It appears that lumpsum payment has also been paid to the respondent No. 2 for maintaining herself and her female child. No fruitful purpose would be served by asking the applicants to face the trial. It would be unfair to force the parties to continue with the criminal proceeding inspite of settlement arrived between them. In order to meet the ends of justice, it is desirable that a criminal proceeding between the parties be put to an end. We are, therefore, inclined to allow this application in the result, we pass the following order:

Order

(i) The criminal complaint/F.I.R. registered vide C.R. No. 159 of 2013 on 12th

April, 2013 with Sakinaka police station u/s. 498(A), 406 r/w. sec. 34 of IPC at the instance of Mrs. Tasneem Mohamad Ali Shaikh respondent No. 2 (orig. complainant) as against the applicants viz. (1) Mr. Mohamad Ali Johar Ali Shaikh; (2) Mrs. Kamrunisa Johar Ali Shaikh; (3) Mr. Mohamad Shamim Mohmad Amin; (4) Mrs. Saira Mohmad Shamim Amin; (5) Mr. Kailash Mithailal Vishwakarma; (6) Mrs. Nisha Kailash Vishwakarma; (7) Mrs. Shamim Shafiq Shaikh; (8) Mrs. Naseem Imran Ansari; (9) Mrs. Shabana Abdul Aziz Shaikh and (10) Mrs. Karimabai Abdulgaffar Shaikh, is hereby quashed.

(ii) The copy of order to be sent to Sakinaka police station for information and taking necessary steps.