
(2013) 07 BOM CK 0054

In the Bombay High Court

Case No : Criminal Application (Apl) No. 401 of 2013

Sau. Nazia Ali

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3408

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : R.R. Prajapati, for the Appellant; D.B. Patel, Assistant Public Prosecutor for Non-Applicant No. 1 and Mr. Mir Naqman Ali, for Non-Applicants No. 2 to 6, for the Respondent

Judgement

P.D. Kode, J.—Heard. Rule. Returnable forthwith. Heard finally by consent of parties.

2. By the present petition, the applicant who is wife of non-applicant No. 2 has prayed for quashing the prosecution against non-applicant No. 2 and his relatives non-applicants No. 3 to 6 for offence u/s 498A read with 34 of the Indian Penal Code. Non-applicants No. 3 and 4 are respectively father and mother of non-applicant No. 2, while the non-applicant No. 5 is sister and non-applicant No. 6 is father-in-law of non-applicant No. 5. The said prosecution has emerged out of the first information report No. 356/2011 lodged by the applicant with Police Station Gittikhadan as after the investigation, the Police had charge sheeted non-applicants No. 2 to 6 for commission of offence u/s 498A read with 34 of I.P.C. Upon the said charge sheet, Regular Criminal Case No. 2033 of 2012 was registered in the Court of Judicial Magistrate First Class, Court No. 10, Nagpur.

3. The application is founded on the contention that the dispute has been amicably settled in between the parties and the applicant and non-applicant No. 2 are living together. It is contended that the proceeding taken by the applicant under the provisions of the Protection of Women from Domestic Violence Act, 2005, against the non-applicants No. 2 to 6 has been withdrawn and so also the

proceeding initiated by the applicant against the non-applicant No. 2 u/s 125 of the Code of Criminal Procedure.

4. The application discloses that in consonance with the terms of the settlement, the non-applicants No. 2 to 6 had agreed to put an end to the prosecution emerged out of the complaint filed by applicant for offence u/s 498A read with 34 of I.P.C. It is submitted that the said prosecution being for a non-compoundable offence had necessitated them to file the present application.

5. Mr. R.R. Prajapati, learned counsel for the applicant submitted that existence of the said prosecution will operate as a hindrance to the settlement arrived at in between the parties. It is urged that the complain giving rise to the said prosecution was filed by the applicant in view of misunderstanding occurred in between herself and her husband. It is thus contended that continuance of the said prosecution in spite of the settlement arrived in between the parties would not serve any useful purpose but would be only an ordeal. Thus prayer is made for quashing and setting aside the said prosecution by exercising powers under S. 482 of the Code of Criminal Procedure.

6. After considering the matters stated in the first information report and the charge sheet at Annexure-A, there appears substance in the submission of the learned APP appearing on behalf of the State/non-applicant No. 1 that allegations upon which the said prosecution is founded are not of such a nature for not accepting the prayer made in the application for achieving harmony between husband and wife.

7. Upon query made, the applicant and the non-applicant No. 2 kept present before the Court and identified by their respective Advocates have also reiterated of arriving of a settlement in between them and the applicant is not desirous of proceeding the prosecution against the non-applicants No. 2 to 6 in view of the settlement arrived.

8. Having regard to the aforesaid and considering true import of Section 482 of the Code of Criminal Procedure as explained by the Hon"ble Apex Court in the decision in the case of Manoj Sharma Vs. State and Others, further clarifying the ratio in earlier decision in case of B.S. Joshi and Others Vs. State of Haryana and Another, , it does appear that allowing the continuance of the criminal proceedings in the Court in spite of the parties having arrived at settlement will be an ordeal amounting to the abuse of the process of law.

9. In the premises aforesaid, the prayers in the application are allowed and FIR bearing No. 356/2011 for offence u/s 498A r/w 34 of the Indian Penal Code registered with Gittikhadan Police Station, Nagpur and Regular Criminal Case No. 2033/2012 arising out of the same and pending before the Judicial Magistrate First Class, Court No. 10, Nagpur are hereby quashed. The bail bonds, if any, entered upon by non-applicants No. 2 to 6 stand cancelled and they are set at liberty. Order of writ be expedited. Rule made absolute in above terms.