

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL WRIT PETITION NO. 3236 OF 2022

1. Sandip Sarjerao Sule,

2. Suman Sarjerao Sule,

3. Sunita Prakash Kale,

...Petitioners

Versus

1. The State of Maharashtra,
Through Senior Inspector of Police,
Hadapsar Police Station in connection
with FIR No. 1242 of 2018

2. Priyanka Sandip Sule,

...Respondents

Mr. Datta Mane for the Petitioners

Mr. J. P. Yagnik, A.P.P for the Respondent No.1-State

Mr. Akash Yadav for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
FRIDAY, 23rd SEPTEMBER 2022**

ORDER (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Mr. Yadav waives notice on behalf of the respondent No.2.

3 By this petition, the petitioners seek quashing of the FIR bearing C.R. No. 1242/2018 registered with the Hadapsar Police Station, Pune, for the alleged offences punishable under Sections

498A, 323, 504 r/w 34 of the Indian Penal Code (`IPC'). Quashing is sought on the premise, that the petitioners and the respondent No. 2 have amicably settled their dispute and have entered into consent terms.

4 Perused the papers. The petitioner No. 1 is the husband of respondent No.2 and petitioner Nos. 2 and 3 are the mother and sister-in-law respectively of the respondent No. 2. Both, petitioner No.1 and respondent No.2 are Engineers. It appears that the petitioner No.1 and respondent No.2 got married at Vaduj, Khatav, Satara, on 21st May 2010, as per Hindu rites and rituals. After marriage, the respondent No. 2 started residing in her matrimonial home at Hadapsar, Pune. From the said wedlock, they have a child, who is presently 9 years of age.

5 As there were marital issues and discord between the parties, the respondent No. 2 lodged the aforesaid FIR bearing C.R. No. 1242/2018 with the Hadapsar Police Station, Pune. After

investigation, charge-sheet was filed in the said case and the matter is presently pending before the learned Judicial Magistrate First Class, Pune, being Criminal Case No. 364/2019.

6 It appears that in the interregnum, the parties decided to amicably settle their dispute. The respondent No. 2 has filed her consent affidavit dated 6th August 2022, which is at page 101 of the petition. The said consent affidavit is duly affirmed before the Superintendent, District Court, Pune. In the said affidavit, the respondent No. 2 has stated that she has settled the dispute with the petitioner and that consent terms have been filed before the learned Judge, Family Court at Pune.

7 Today, learned counsel for the respondent No. 2 has tendered a copy of the consent terms entered into between the parties before the learned Judge, Family Court at Pune. According to the terms of settlement, the respondent No. 2 will be given a sum of Rs. 25,00,000/- by way of full and final settlement, out of which,

respondent No.2 has received Rs. 10,00,000/- till date and the balance amount of Rs. 15,00,000/- would be paid to her on the date of decree of divorce by mutual consent.

8 Respondent No. 2 is present in Court. Learned counsel for the respondent No. 2 has tendered a self attested xerox copy of the Aadhar Card of the respondent No. 2. The same is taken on record. Learned counsel for the respondent No.2 identifies her. Learned A.P.P has verified the original Aadhar Card of the respondent No.2.

9 On questioning, she re-iterates what is stated by her in the consent affidavit and states that she has received Rs. 10,00,000/- till now. The respondent No. 2 states that in view of the settlement, she has no objection to the quashing of the FIR bearing C.R. No. 1242/2018 registered with the Hadapsar Police Station, Pune and consequently, the proceeding arising therefrom.

10 Considering the nature of dispute, relations between the parties, consent terms filed by the parties and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab & Anr.*¹ and *Narinder Singh & Ors. vs. State of Punjab & Anr.*², there is no impediment in allowing the petition.

11 The petition is accordingly allowed. The FIR bearing C.R. No. 1242/2018 registered with the Hadapsar Police Station, Pune, the charge-sheet and consequently the proceeding arising therefrom (i.e. Criminal Case No. 3641/2019), pending before the learned Judicial Magistrate First Class, are quashed and set-aside.

12 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

13 Needless to state that the said quashing of proceedings is subject to the respondent No.2 receiving the balance amount of Rs. 15,00,000/- at the time of the decree of divorce by mutual consent.

14 At this stage, we are constrained to observe that a large number of petitions are filed daily in the High Court, seeking quashing of Section 498A alongwith other compoundable offences, having regard to the amicable settlement between the parties. Parties are constrained to approach the High Court, as Section 498A is non-compoundable and the only remedy to quash the case, by consent, is by filing an application under Section 482 of the Code of Criminal Procedure (`Cr.P.C'). It is immaterial, whether the parties have reconciled or have amicably resolved their disputes and entered into consent terms, the fact remains, that to quash the proceeding, parties are required to file applications/Writ Petitions in this Court, are required to remain present in this High Court, and to file affidavits and give proof of their identity.

15 Considering the aforesaid, we requested the learned Advocate General to assist the Court, on this issue. The learned Advocate General has rendered valuable assistance, by bringing to the notice of this Court, the development/steps taken by the Government of Maharashtra to make Section 498A compoundable. Learned Advocate General informs that a bill was passed for amending the Code of Criminal Procedure, 1973 so as to make the offence u/s 498A amongst other offences, a compoundable offence. The said bill was passed in both the houses in the State Government.

16 The learned Advocate General submits that the said amendment proposed in the *L.A. BILL No. LVII OF 2018* was introduced on July 17, 2018, and passed in both houses on July 20, 2018. Following is the reproduction of the suggested amendment:

“Amendment of Section 320 of Act 2 of 1974

21. In Section 320 of the said Code, in sub-section (2), in the Table, -

(1)

(2) *after entry relating to Section 494, the following entry shall be inserted, namely: -*

“Cruelty to woman. 498-A The woman subjected to cruelty: Provided that, the application for compounding shall be supported by an affidavit of the woman subjected to cruelty stating that the marital dispute has been amicably resolved either by resumption of cohabitation with the husband or that the said woman and the accused have worked out any other mutually satisfactory disposition:

Provided further that, a minimum period of two months shall elapse from the date of request or application for compounding before a Court and the Court may accept the request for compounding, if none of the parties withdraws the consent for compounding in the intervening period.”;

17 He submits that the Bill was thereafter sent to the President of India, for his assent. The learned AG further submitted the President forwarded the Bill to the Ministry of Women and Child Development for its comments. After considering the Code of Criminal Procedure (Maharashtra Amendment) Bill, 2018, the Ministry of Women and Child Development; vide its Office

Memorandum *OM No. CDN/105/2018-Coord* dated 03.06.2020 noted that ‘*The issue has been reconsidered and it is stated that ‘diluting of Section 498A of IPC will not be in the interest of the victim’.*

18 In light of the comments received from the Ministry of Women and Child Development, dated 03.06.2020, the Ministry of Home Affairs (J and PP Section, Judicial Wing), Government of India, had written to the Government of Maharashtra vide letter *F. No.17/44/2018-Judl & PP* dated 17.08.2021, seeking clarification to the Ministry, so that the Bill could be processed further. In response to the said communication, it appears that the Government of Maharashtra forwarded a clarification in the form of a Clarification Note on 26.10.2021.

19 In the said Clarification Note, the judgment of the Hon’ble Supreme Court of India in *Ramgopal & Anr. v. State of M.P. & Anr*³

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(2010) 13 SCC 540.

was relied upon wherein the Apex Court made the following observations:

“3. There are several offences under the IPC that are currently non-compoundable. These include offences punishable under Section 498-A, Section 326, etc. IPC. Some of such offence can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of reconciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible.

20 In a detailed clarification note, sent by the Government of Maharashtra, reliance was also placed on numerous Law Commission reports namely, 243rd Report, 154th Report, and 237th Report where there are clear recommendations to make the offence compoundable. Alongwith the Law Commission reports, the Committee on Petitions (Rajya Sabha) in the report presented on 07.09.2011, was also relied on in the clarification note, wherein, the Committee recommended

the Central Government to consider whether the offence under Section 498A, IPC can be made compoundable.

21 The clarification was sent by the Law and Judiciary Department, Government of Maharashtra vide letter No. CRPC 1318/C.R.16/D-19 dated 26.10.2021 to the Ministry of Home Affairs, Government of India. The said clarification is now pending with the Ministry of Home Affairs, Government of India.

22 It is not in dispute that, in the 154th Report of the Law Commission, there was a clear recommendation to make the offence compoundable. The recommendation of the Law Commission in the 154th Report regarding Section 498A was reiterated in the 177th Report (2001). Justice Mallimath Committee on Criminal Justice Reform also recommended that it should be made compoundable. The Ministry of Home Affairs in its 111th Report on the Criminal Law (Amendment) Bill 2003 (August 2005), observed thus :

“It is desirable to provide a chance to the estranged spouses to come together and therefore it is proposed to make the offence u/s 498A IPC, a compoundable one by inserting this Section in the Table under sub-section (2) of Section 320 of Cr.P.C.”

23 The 128th Report of the Standing Committee (2008) on the Code of Criminal Procedure (Amendment) Bill, 2006 reiterated the recommendation made in the 111th Report. In the Committee of Petitions (Rajya Sabha) Report presented on 7th September 2011 regarding this issue, following were the recommendations under the heading “Making the offence under Section 498-A IPC compoundable” :

“The Committee notes that the offence under Section 498A IPC is essentially a fallout of strained matrimonial relationship for which there might be various considerations. Since there can be various causes leading to an offence under Section 498A IPC and parties to the marriage could be responsible for the same in varying degrees, it would be appropriate if the remedy of compromise is kept open to settle a matrimonial dispute. In this context, the Committee feels that in case of any marital discord which has reached the stage of a complaint under Section 498A IPC, it would be better if the parties have the option of a compromise where after they can settle down in

their lives appropriately for a better future rather than diverting their energies negatively by pursuing litigation. The Committee recommends to the Government to consider whether the offence under Section 498A IPC can be made compoundable.”

(emphasis supplied)

24 The 237th Law Commission Report also talks about making 498A a compoundable offences. This recommendation was again reiterated in the 243rd Report.

25 According to the National Crime Records Bureau (NCRB) 2020 report, a total of 111,549 cases were registered under 498A in 2020. Of these, 5,520 were closed by Police citing as false and overall 16151 cases were closed by police either because they were false or there was a mistake of fact or law or it was a civil dispute etc. That is 14.4% of cases were closed by police for not finding merit in the case. 96,497 men, 23,809 women were arrested under 498A, making total arrests under this section 1,20,306. 18,967 cases were tried in courts of which 14,340 led to acquittal and 3,425 led to

conviction. 498A cases pending trial at the end of 2020 are 651,404 with a pendency percentage of 96.2%.

26 This Court, in its one of the earliest judgment in *Suresh Nathmal Rathi and Ors. v. State of Maharashtra and Ors.*⁴, in 1992 made a strong suggestion to amend Section 320 of Cr.P.C, to include Section 498A within that Section. The Court elaborately dealt with the institution of marriage. An amendment to Section 498A of the IPC was suggested/proposed in the interest and welfare of the married couple and society and the section should be made compoundable and bailable. A copy of the judgment was directed to be forwarded to the Government of Maharashtra, Law & Judiciary Department for consideration. It was observed that the Government of Maharashtra should persuade the Government of India to introduce necessary amendments to Section 498A of the IPC and Section 320 of the Cr.P.C, as suggested by various Bar Associations, since the issue was affecting

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1992 Cri. L.J. 2106

millions of people, involving their family and social lives (*Para 25 of the said judgment*).

27 Similarly, in *Preeti Gupta & Ors. v. State of Jharkhand & Anr.*⁵, the Apex Court took a serious re-look at the said provision i.e. Section 498A IPC.

The Law Commission Reports that were issued in the upcoming years were an outcome of this judgment. The observations made in this judgment were crucial for the legislature to step into, to address the concerns raised by the bench. Following is the relevant quote from the judgment which found its place in the Law Commission Report on Section 498A.

“37. Before parting with the case, we would like to observe that a serious re-look of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.”

5 (2010) 8 SCC 131

The Hon'ble Supreme Court then made these observation :

“It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place is before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.”

Raising concerns over the rising number of matrimonial litigations, the Court made certain observations. The relevant paras are reproduced hereinunder :

“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.”

“32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such

complaints which are not even bonafide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.”

“34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the

complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

28 Despite the same, Section 498A is still non-compoundable. The importance of making the Section 498A compoundable with the permission of the Court, can hardly be overlooked/understated.

29 It is pertinent to note, that during the pendency of the above-mentioned Bill, this Court (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.), in its order dated 21st December 2021 passed in Criminal Application Nos. 647/2021 and 27/2021, had made certain observations with regard to making Section 498A compoundable with the permission of the Court. The relevant para reads thus:

"11. The parties can save expenses, time and energy in approaching the High Court. It will also free up the already crowded docket of this court. Most of these connected proceedings can be put to rest and the parties can resume normal life. It would be in the interest of the parties in such matters if the offence is made

compoundable with permission of the Court. Therefore, we are of the opinion that the Government of Maharashtra should consider this aspect and consider making the offence under Section 498-A of IPC compoundable under Section 320 of Cr.P.C., with permission of the Court, as was done by the State of Andhra Pradesh.

30 The above-mentioned judgment has also been forwarded by the Government of Maharashtra, (Law and Judiciary Department) vide *Letter No. CRPC 1318/C.R.16/D-19* dated 10.01.2022, to the Government of India for their *information* and consideration.

31 We may note here, that everyday, we have a minimum of 10 petitions/applications seeking quashing of Section 498A by consent, since 498A is non-compoundable. Concerned parties, have to come personally before the Court from wherever they are residing, including from villages, thus incurring tremendous hardships for the parties concerned, apart from travelling expenses, litigation expenses and staying expenses in the city. Parties, if working, are required to take a day off. Apart from the hardships caused to parties, if Section 498A is made compoundable with the permission of the Court,

precious time of the Court can be saved. Cases under Section 498A are not such, that a Magistrate cannot compound the same, with the permission of the said Court.

It is pertinent to note, that the State of Andhra Pradesh, has made Section 498A compoundable with the permission of the Court, way back as in 2003.

32 Considering what is stated above, we direct the Registry to forward a copy of this order to the learned Additional Solicitor General, for taking necessary steps/action and to enable him to take up the issue before the concerned Ministry, at the earliest.

33 Petition is disposed of with the aforesaid observations. Petition be listed under the caption **`for direction' on 19th December 2022.**

34 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.