
(2021) 07 BOM CK 0023

Bombay High Court

Case No: Writ Petition No. 2048 Of 2021

Nizam Rehmat Khan
And Others

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: July 3, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Code Of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 34, 498A

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

Bench: Division Bench

Advocate: Ajay Tripath, S.D. Shinde, Khurshida Khan, Sana Nizam Rehmat Khan

Final Decision: Allowed

Judgement

N.J. Jamadar, J

1. Leave to amend. Amendment be carried out forthwith.
2. Rule. Rule is made returnable forthwith and with the consent of the learned counsels of the parties, heard finally at the stage of admission.
3. This petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 is filed seeking to quash and set aside the proceedings bearing No. PW/299/2021, 13th Court, Boiwada, Dadar, Mumbai arising out of FIR No. 255/2020 registered against the petitioners with R.A.K. Marg Police Station, Mumbai for the offence punishable under section 498-A Nizam Rehmat Khan And Ors vs The State Of

Maharashtra And Anr on 3 July, 2021 read with section 34 of the Indian Penal Code, 1860 ('the Penal Code').

4. The petitioners have been arraigned for the offence punishable under section 498-A read with section 34 of the Penal Code for having subjected

the respondent No.2-Mrs.Sana Nizam Rehmat Khan, first informant, to cruelty. The marital dispute also led to institution of a proceeding under the

Protection of Women from Domestic Violence Act, 2005.

5. The petitioners have approached the Court with the assertion that, in the intervening period, the matrimonial dispute has been amicably resolved.

The marriage between the petitioner No.1 and respondent No.2-the first informant has been dissolved in terms of 'Khula', obtained by the respondent

No.2 on 21 st April 2021. Hence, the petitioners have prayed for quashing and setting aside the above-referred prosecution.

6. The learned counsels for the petitioners and the respondent No.2 submit that the parties have amicably resolved all the disputes. Consent terms

have been filed before the Court of Metropolitan Magistrate, Dadar, Mumbai. A copy of the consent terms is annexed to this petition. The respondent

No.2-first informant has also filed an affidavit before this Court. Paragraph Nos.2 and 5 of the affidavit read as under :

2. I say that, the disputes and misunderstandings between me and the petitioners are amicably settled and the same settlement/compromise arrived

through the consent term before the Hon'ble 13th Metropolitan Magistrate Court at Boiwada in C.C. No. 53/DV/2020 and in said case, Petitioners and

myself filed consent terms dated 26.02.2021. The said consent terms already annexed to the above Petition at '19-24'. I rely upon and admit the

contents of the said consent terms. I say that in view of said consent terms, myself and Petitioner No.1 agreed to separate from each other wherein I

agreed to give ""KHULANAMA"" to the Petitioner No.1, which I have given by executing the ""KHULANAMA"" dated 21.04.2021 in accordance with

Shariat law and also in furtherance of the said consent terms. Hereto annexed and marked as Exhibit ""A & A1"" is a copy of the ""KHULANAMA

and also copy of translation thereof.

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5.I say that I have no objection if the complaint against the present petitioners with the R.A.K. Marg Police Station, Mumbai as F.I.R. bearing No.

255 of 2020, for offences under Section 498A, r/w. 34 of the Indian Penal Code, 1860 and also all the other proceedings arising therefrom are quashed.

I say that, I do not want to pursue the said complaint and further proceedings arising out of it as the same shall not serve any purpose to anybody.

Hence, it is my desire and also humble request not to proceed and/or pursue with the above FIR and any criminal proceedings arising out of it.

7. Ms.Sana Khan, respondent No.2-first informant appeared Shraddha Talekar, PS Nizam Rehmat Khan And Ors vs The State Of Maharashtra And

Anr on 3 July, 2021 before the Court through video conference. The respondent No.2 admits the contents of the consent terms as well as the

assertions in the affidavit. The respondent No.2 is identified by the learned counsel for respondent No.2. The respondent No.2 submitted that she has

decided to settle the matrimonial dispute with the petitioner No.1 out of her own volition. There is no coercion or duress.

8. Evidently, the marital discord between the petitioner No.1 and respondent No.2 was the genesis of the offence. The parties have decided to bury

the hatchet. The marriage between the petitioner No.1 and respondent No.2 is dissolved by executing a ""Khulanama"". They have parted ways. In the

circumstances, continuation of the instant prosecution would serve no fruitful purpose. In view of the settlement between the parties, the possibility of

the prosecution ending in conviction is very remote and bleak. On the contrary, continuation of the prosecution would cause a serious prejudice to the

parties. Thus, in order to secure the ends of justice and prevent the abuse of the process of the Court, we are persuaded to quash the case bearing

No.PW/299/2021, pending on the file of 13 th Court, Boiwada, Dadar, Mumbai. Nizam Rehmat Khan And Ors vs The State Of Maharashtra And Anr

on 3 July, 2021

9. Hence, the following order :

ORDER

(i) The petition stands allowed in terms of prayer clause (a).

(ii) The case, bearing No. PW/299/2021, 13th Court, Boiwada, Dadar, Mumbai arising out of FIR No. 255 of 2020 registered against the petitioners

with R.A.K. Marg Police Station stands quashed and set aside.

(iii) Rule made absolute in the aforesaid terms.