

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4742 OF 2017

1. Syed Farhan Syed Mushtaq,
Age- 27 Years, Occu.Business.
2. Syed Mushtaq Syed Rabbani,
Age- 55 years, Occu.Business & Agril.
3. Shahinbee Syed Mushtaq,
Age-50 Years, Occu.Household.
4. Rabiya Basrin d/o.Mushtaq Rabbani,
Age-22 Years, Occu. Household.
5. Nagma Tanna Khan d/o.Mushtaq Rabbani,
Age-20 years, Occu.Household.
6. Syed Sohil Syed Mushtaq,
Age-18 years, Occu.Nil.

All R/o. Rajmohalla, Sailu,
Tq.Sailu, Dist. Parbhani.

7. Syed Ashfaq Rabbani,
Age-50 years, Occu. Service,
R/o.Risod, Tq.Risod,
Dist.Washim.
8. Syed Maqsood Syed Rabbani,
Age-47 Years, Occu.Business,
R/o.as above.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through the Investigation Officer,
Police Station Jinsi, Aurangabad,
Tq. & Dist. Aurangabad.

2. Afreen Syed Farhan,
Age-24 years, Occu.Household,
All R/o.Rajmohalla, Sailu,
Tq.Sailu, Dist.Parbhani. **RESPONDENTS**

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Mr.Manish P.Tripathi, Advocate for the
applicants.

Mr.S.B.Joshi, APP for Respondent-State

Mr.Pramod B.Gapat, Advocate for respondent
no.2.

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL, JJ.**

DATE : 02.11.2017

ORAL JUDGMENT: [Per S.S.Shinde, J.]

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Application is filed with the
following prayer:

B] The complaint bearing Crime
No.161/2017 dated 15.5.2017,
registered at Jinsi Police Station,
Aurangabad for the offence
punishable u/sec.498-A, 323, 504,

506 r/w 34 of I.P.C., may kindly be quashed and set-aside.

3] Pursuant to the notices issued to the respondents, respondent no.2 has caused appearance through her Advocate. She has filed affidavit in respect of terms of compromise duly verified before the Registrar [Judicial] of this Court. The affidavit is already placed on record. Applicant no.1 and respondent no.2 have decided to reside together. On specific query to respondent no.2, who is present in the Court, she stated that it is her voluntary act to file affidavit and pray therein to quash the First Information Report. She further stated that already she is residing in the matrimonial home with applicant no.1 since 1 month.

4] In that view of the matter, further continuation of the investigation of the FIR vide Crime No.161/2017 registered with Jinsi

Police Station, Aurangabad, for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code would be abuse of process of law. The Hon'ble Supreme Court in the case of **Gian Singh V/s.State of Punjab and another**¹ in para No.61, observed, thus:

"61. ..The power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 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 FIR 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

1. 2012 (10) SC 303

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 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."

5] Keeping in view the judgment in the case of **Gian Singh [supra]**, we are inclined to allow this application.

6] Accordingly, Application is allowed in terms of prayer clause-B. Rule is made absolute on above terms. The application stands disposed of.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC