

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

CRIMINAL APPLICATION NO. 6843 OF 2016

1. Azharuddin Khan S/o Ziauddin Khan,
Age: 69 years, occu. Retired,
 2. Nilofar Khan W/o Azharuddin Khan,
Age: 55 years, occu: Household,
 3. Samim Atif Khan S/o Azharuddin Khan,
Age: 29 years, occu: Service,
R/o Flat No. 102, A-Wing Ascon,
IV Building, Nayannagar, Mira Road,
Thane, at present r/o Park INN,
Sandton, Katterene Street,
Jonasburg, South Africa
- ...APPLICANTS

versus

1. The State of Maharashtra
Through I.O. City Chowk Police
Station Aurangabad in
Crime No. 98/2015.
 2. Khan Shaghuftha W/o Samim Atiq Khan,
Age: 27 years, occu: Household,
R/o: House No. 657, Pensionpura,
Chavani, Aurangabad.
- ...RESPONDENTS

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Mr. A.P. Piratwad, Advocate for applicants
Mr. S.G. Karlekar, APP for respondent No. 1
Mr. N.T. Tribhuvan, Advocate for Respondent No. 2

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**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 30th JANUARY, 2017.

RESERVED ON : 2nd FEBRUARY, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1. The applicants have moved the present application by invoking remedy under section 482 of the Criminal Procedure Code

(for short "Cr.P.C.") to quash and set aside Regular Criminal Case No. 955 of 2016 instituted pursuant to FIR vide crime No I-98 of 2015 registered at City Chowk Police Station, Aurangabad for the offences punishable u/s. 498A and 504 read with section 34 of the Indian Penal Code (for short "IPC").

2. Applicant No. 3 – Samim Atif Khan is the husband whereas applicants No. 1 and 2 are in-laws of respondent No. 2 – Khan Shaghuftha. The marriage of applicant No. 3 – Samim Atif Khan and respondent No. 2 – Khan Shaghuftha was solemnized on 08-01-2014 at Aurangabad as per Muslim rites. But, there was marital discord in between the spouse. It has been alleged that applicants maltreated and harassed respondent No. 2 – wife Khan Shaghuftha for demand of money as well as trifle domestic reasons. Respondent No. 2, fed up with maltreatment by husband and in-laws approached to the City Chowk Police Station, Aurangabad and lodged the complaint/FIR, pursuant to which, the Police of City Chowk Police Station registered the crime No. I-98 of 2015 under sections 498A and 504 read with section 34 of the IPC and swung into action. During the course of investigation, the statements of witnesses came to be recorded. After completion of procedural formalities, Investigating Officer submitted the charge-sheet before the Judicial Magistrate, First Class, Aurangabad, and same is registered as Regular Criminal Case No. 955 of 2015.

3. Pending the proceedings of Regular Criminal Case NO. 955 of 2016, the applicants moved present application seeking relief to quash and set aside the criminal charges nurtured against them on behalf of respondent No. 2 wife Khan Shaghuftha. According to applicants, all the allegations against them are vague, omnibus and not sustainable within purview of law. Respondent No. 2 wife - Shaghuftha insisted applicant No. 3 - husband to return to India for residence. There were no ill-treatment and harassment to respondent No. 2 Shaghuftha at the hands of applicants. Therefore, applicants approached to this court and prayed to quash and set aside criminal proceeding of Regular Criminal Case No. 955 of 2016, instituted following first information report (for short "FIR") in crime No I-98 of 2015 registered with City Chowk Police Station, Aurangabad.

4. However, during the hearing of petition, the matrimonial dispute came to be referred to the mediator for amicable settlement in between the spouse. It has been reported that, efforts of the mediator yield result and the spouse settled their dispute amicably amongst them. Respondent No. 2 has filed the affidavit in-reply on record to that effect and submitted that she does not want to proceed further in the criminal proceedings of Regular Criminal Case No. 955 of 2016, pending before the learned Magistrate.

5. We have given patience hearing to both learned counsel appearing for the parties. Perused the affidavit-in-reply of

respondent No. 2 filed on record as well as consent terms reduced into writing in between the spouse for dissolution of their marital tie after amicable settlement. The consent terms are taken on record and marked as "X" for identification purpose. Respondent No. 2 – Khan Shaghuftha *suo-moto* remained present before this court. We preferred to interact with her in regard to terms of compromise and her willingness to withdraw the allegations nurtured against the applicants in regard to maltreatment and harassment as well as criminal intimidation as mentioned in the FIR vide crime No. I-98 of 2015. Respondent No. 2 - Khan Shaghuftha categorically stated that the marital dispute in between the spouse has already been settled amicably. She has received lump-sum amount towards maintenance from applicant No. 3 – husband Samin Atif Khan. Moreover, marital relations has also been dissolved in between them after giving divorce as per Mohammedan Law. Therefore, she does not want to pursue the criminal proceeding bearing Regular Criminal Case No. 955 of 2016 and she has no objection to quash and set aside the proceedings by exercising inherent powers under section 482 of Cr.P.C.

6. Admittedly, the spouse settled their matrimonial dispute amicably and they started residing separately after dissolution of marital relation. In view of subsequent development of settlement of marital discord in between the spouse, the respondent No. 2 - wife Khan Shaghuftha does not want to proceed further with Regular

Criminal Case No. 955 of 2016 instituted on the basis of FIR vide crime No. I-98 of 2015 registered at City Chowk Police Station against the applicants under section 498A, 504 read with section 34 of the IPC. At this juncture, we may refer to legal guidelines delineated by the Apex Court in the case of **Gian Singh Vs State of Punjab and another** reported in **2012 AIR SCW 5333**. The Apex Court, in paragraph No. 54 of said judgment has observed that:

“Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crimdoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of mortal turpitude under special statues, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc, or the family dispute, where

the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint of F.I.R. If it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

7. In view of aforesaid legal guidelines, we have no any hesitation to accept the contentions put forth on behalf of applicants and respondent No. 2 – wife Khan Shaghuftha. The alleged offence is of a personal nature and resolution of the dispute on amicable settlement would put the litigation to an end and it would bring mental peace and security in between families. In case, the criminal proceeding is allowed to be continued against the applicants it would tantamount to abuse of process of law and to dissipate the precious time and energy of the court of law. No any fruitful purpose would be sub-served to secure the ends of justice after trial of applicant/accused for the charges pitted against them. In these peculiar circumstances, there would not be any impediment to quash and set aside criminal proceeding pending before the learned Magistrate, as prayed on behalf of both side.

8. In the above premise, the application stands allowed. Regular Criminal Case No. 955 of 2016 instituted pursuant to FIR vide crime No I-98 of 2015 registered at City Chowk Police Station,

Aurangabad for the offences punishable under sections 498A and 504 read at section 34 of the IPC is hereby quashed and set aside. Inform the concerned learned Magistrate, Aurangabad accordingly. No order as to costs.

Sd/-

Sd/-

[K. K. SONAWANE, J.]**[S.S. SHINDE, J.]**

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