

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1508 OF 2018

- 1) Ashafak Shamsuddin Pinjari,
Age 40 years, Occupation Agri.,
- 2) Sharukh Shaikh Mushir,
Age 40 years, Occupation Labourer,
- 3) Ashafak Iliyas Pinjari,
Age 35 years, Occupation Labourer,
- 4) Gokul Sakharam Tayade,
Age 42 years, Occupation Labourer,
- 5) Mehamood Shamsuddin Pinjari,
Age 45 years, Occupation Agri.,

All R/o. Shirsoli Tq. Dist. Jalgaon.

.. Applicants

VERSUS

- 1) The State of Maharashtra,
Through Jillha Peth Police Station,
Jalgaon.
- 2) Rubina w/o Ashafak Pinjari,
Age 30 years, Occupation Household,
R/o Shirsoli Tq. and Dist.Jalgaon.

.. Respondents

Mr. S. R. Dheple, Advocate for the applicants.

Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent No.1
- State.

Mr. M. C. Ghode, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 15-06-2018.

ORAL JUDGMENT (Per T. V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.
2. The application is filed under Section 482 of Code of Criminal Procedure for relief of quashing of First Information Report bearing No. 49 of 2018, registered with Jillha Peth Police Station, Jalgaon on 12-04-2018 for the offences punishable under Section 419, 420, 468, 471 read with 34 of Indian Penal Code.
3. Heard both the sides.
4. Learned counsel appearing for applicants and first informant submitted that, the FIR was given by the wife of applicant No.1 Ashafak Pinjari and she has settled the dispute and the property in respect of which there was grievance is transferred in her name and so she has filed affidavit with the prayer for granting permission to settle the dispute, and for compounding the offence. There is also settlement document.
5. The First Information Report was given by the wife of applicant No.1 on 12-04-2018 and in the same she had made allegations that, she was owner of few plots and due to dispute with the husband she was living with her parents. It is her contention that, when she was present in parent's house, she took online print outs of the revenue

record in respect of the plots and she realized that her husband had got transferred the plots in his name by presenting other lady before the authority as his wife. Thus bogus gift deed was created by using other lady and loss was caused to the first informant.

6. The terms of settlement show that, the dispute is settled and the wife has returned to matrimonial house. There was other condition for settlement and her property is again transferred in her name. Submission was made that the parties have acted as per the terms of settlement.

7. Learned Addl. Public Prosecutor submitted that some of the offences are non-compoundable, and he opposed the application.

8. In support of the contention that this Court can exercise the power given under Section 482 of Code of Criminal Procedure and even under Article 226 of the Constitution of India, the learned counsel for the applicants placed reliance on some reported cases, those are -

1) 2014 DGLS (Soft.) 182, Supreme Court, (Narinder Singh and Others Vs. State of Punjab and Another), and

2) 2012 DGLS (Soft.) 457, Supreme Court, (Gian Singh Vs. State of Punjab and Anr.).

At Para No.57 there are relevant observations in second case i.e.

Gian Singh Vs. State of Punjab and Anr, and they are as under -

"57. The position that emerges from the above discussion can be summarised thus: 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 F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be 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 be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominatingly civil flavour stand

on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding. "

9. There is one more case on this point like 2012 (2) Bombay C. R. (Cri) Pg. 72 (Supreme Court) (Shiji @ Pappu and ors. Versus Radhika and anr.). The Hon'ble Apex Court has discussed the provision of Section 320 of Code of Criminal Procedure and has

made observation that, in some cases like present one where the dispute is of personal in nature, High Court needs to take more pragmatic view and use the power under Section 482 of Code of Criminal Procedure or power under Article 226 of the Constitution of India.

10. In the present matter the applicants and respondent No.2 have settled dispute. They came to the Court immediately after the registration of crime and charge-sheet is not yet filed. Considering the nature of the dispute, this Court holds that, relief to the applicants needs to be given. In the result application is allowed. Relief is granted in the applications in terms of prayer Clause "C". Rule made absolute in the application accordingly. The application is disposed of in above terms.

(K. L. WADANE)
JUDGE

(T. V. NALAWADE)
JUDGE

gawade/-.