

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4453 OF 2017

- 1] Gajanan S/o Gulabrao Bul,
Age : 65 Years, Occu : Retired,
R/o Navjeevan Colony,
Amravati Camp, Amravati,
Tq. & Dist. Amravati.
- 2] Dr. Nilima D/o Gajanan Bul
(Dr. Nilima W/o Mahesh Muley)
Age : 37 Years, Occu : Nil,
R/o Navjeevan Colony,
Amravati Camp, Amravati,
Tq. & Dist. Amravati. ...Applicants.

Versus

- 1] The State of Maharashtra
Through Police Inspector,
Local Crime Branch, Ahmednagar.
- 2] Dr. Mahesh Madhavrao Muley,
Age : 42 Years, Occu : Medical
Practitioner, ...Respondents.
R/o Bhagirathi Hospital,
Burudgaon Road, Ahmednagar,
Tq. & Dist. Ahmednagar.

Mr. D. G. Nagode, Advocate for applicants.
Mr. R. B. Bagul, Addl. Public Prosecutor, for
respondent No. 1/ State.
Mr. K. M. Gadve Patil Adv. For respondent No. 2.

**CORAM : PRASANNA B. VARALE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 12-04-2018.

JUDGMENT : [Per Smt. Vibha Kankanwadi, J]

(1) Present application has been filed by invoking the inherent powers of this Court under Section 482 of Code of Criminal Procedure for quashing First Information Report lodged at the instance of respondent No. 2.

(2) Applicant No. 1 is the father of applicant No. 2. Applicant No. 1 was wife of respondent No. 2. The marriage of the applicant No. 2 was performed with respondent No. 2 as per Hindu rites on 27.12.2010. According to the applicants, the applicant No. 2 cohabited with respondent No. 2 for about 4 months only. The applicant No. 2 and respondent No. 2 are residing separately since 4th April 2011. Thereafter, various criminal and civil cases have been instituted by them against each other. The respondent No. 2 had filed RTC case No. 263/2012 against the present applicants as well as four other persons contending that they have committed offence punishable under Sections 388, 389, 417, 418, 419, 420 and 120B read with 34 of Indian Penal Code. It appears that the matter was

thereafter referred for investigation under Section 156(3) of Code of Criminal Procedure by the concerned Court and on the basis of same the FIR vide CR No. 9/2012 came to be registered with Kotwali Police Station, Ahmednagar.

(3) During the pendency of this application, the applicant No. 2 has expired on 25.10.2017 and her death certificate has been produced which has been marked as "X" for identification.

(4) It has been contended by the applicants that they alongwith four others had filed Criminal Appln No. 2501/2012 before this Court for quashing FIR No. 9/2012 registered with Kotwali Police Station. During pendency of the proceeding, this Court referred the matter for mediation. However, said mediation was not successful. This Court allowed the said petition partly on 13.11.2013 and the proceedings against the other accused persons was quashed. As regards present applicants are concerned, their prayer was rejected. Being aggrieved by the said judgment and order, the applicants had approached the Hon'ble Supreme Court

by filing Special Leave to Appeal (Criminal) Nos. 823-824/2014. However, those petitions came to be dismissed by order dtd. 14.2.2014. The respondent No. 2 had filed Regular Civil Appeal No. 175/2013 before the learned District Judge, Amravati against the judgment and order passed by learned Civil Judge Senior Division, Amravati in Hindu Marriage petition No. 149/2012 on 26.9.2013. The said petition was filed for dissolution of marriage with decree of nullity. At the same time the applicant No. 1 filed Criminal Appln. 98/2011 under the provisions of protection of Women from Domestic Violence Act, 2005. Criminal Revision Appln No. 144/2012 was also filed by applicant No. 2 for enhancement of interim maintenance. The learned District Judge, Amravati had referred the matter for mediation and at that time the mediation was successful. The applicant No. 2 and respondent No. 2 had arrived at the amicable settlement and terms of compromise were reduced to writing. It was one of the terms that the respondent No. 2 will not proceed against the complaint and would give consent for quashing FIR CR No. 9/2012. Hence, by this petition, the applicants have prayed for quashing the FIR on the basis of compromise.

(5) The compromise purshis which was filed in Criminal Appeal No. 144/2012 before learned District Judge, Amravati has been produced at page No. 29. A clear stipulation has been made at para No. 5 that the present respondent would agree to withdraw unconditionally the criminal complaint bearing MCR No. 9/2012 filed on 28.2.2012 and pending before Judicial Magistrate First Class at Ahmednagar.

(6) Since the applicant No. 2 has expired, the matter is abated against her. Now, as regards the applicant No. 1 is concerned, the respondent No. 2 has no objection to quash and set aside the first information report. The applicant No. 1 and respondent No. 2 were present before this Court. The respondent No. 2 especially has again reiterated before this Court that he has no objection for quashing the first information report. We find that his consent is voluntary and therefore, we accept the same.

(7) In **Parbatbhai Aahir @ Parbatbhai Bhimsinghbhai Karmur and Ors. V/s State of Gujarat and Anr., [(2017) 9 Supreme Court Cases 641] (Three**

Judges Bench) it has been observed that "Sec. 482 of Code of Criminal Procedure is prefaced with an overriding provision. The statute saves inherent power of the High Court, as a Superior Court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. In the some cases the broad principles are emerged from the precedents i.e. various earlier pronouncements of the Hon'ble Supreme Court have been summarized which are as follows :

(1) Section 482 of CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any Court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compound an offence. While compounding an offence, the power of the Court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is

non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plentitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any Court.

(5) The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly

speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie

beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

- (8) Therefore, taking into consideration the ratio laid down above, we find this to be a fit case where we should exercise our powers under Section 482 of Code of Criminal Procedure.

Hence, following Order;

ORDER

The application is allowed in terms of prayer Clause "B".

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE