

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

CRIMINAL APPLICATION NO. 354 OF 2020

01 Mazharuddin s/o Kutubuddin Shaikh

02 Parvezuddin s/o Mazharuddin Shaikh

03 Anisuddin s/o Mazharuddin Shaikh

04 Riazuddin s/o Kamruddin Shaikh Applicants

Versus

01 The State of Maharashtra

02 Kalimuddin s/o Alimuddin Shaikh Respondents

Mr. N. E. Deshmukh, advocate for the applicants

Mr. K. S. Patil, APP for Respondent No.1-State.

Mr. P. P. More, advocate holding for Mr. N. R. Shaikh, advocate for Respondent No.2.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 25th November, 2021.

PC :

1 By consent, application is heard finally at the stage of admission.

2 Applicants no.1 to 3 are seeking quashing of the First Information Report bearing Crime No.213/2014, registered with Bazar Peth Police Station, Bhusawal, for the offences punishable

under Sections 415, 420, 406 read with Section 34 of the Indian Penal Code. During pendency of this application, charge sheet has been submitted. However, the charge sheet has been submitted only against applicant no.4 in the year 2015 and present applicants no. 1 to 3 have been shown absconding under Section 299 of the Code of Criminal Procedure.

3 Learned Counsel for the applicants submits that applicants no.1 to 3 have borrowed certain amount from Respondent No.2 for their business need and since the said amount was not repaid within time, Respondent No.2 has lodged the complaint on the basis of which, aforesaid crime came to be registered and subsequently charge sheet came to be submitted.

4 It is informed that parties have arrived at an amicable settlement and filed joint pursis and the compromise agreement is also placed before us.

5 Learned Counsel for applicants and learned Counsel for Respondent No.2 – informant submit that as per the compromise terms, Respondent No.2 has agreed to accept an amount of Rs.5 lakhs towards full and final settlement of claim.

Learned Counsel for the applicants has pointed out that two Demand Drafts for an amount of Rs. 2. 50 lakhs each, dated 05.08.2021, as mentioned in the compromise agreement, were drawn in favour of Respondent No.2, however, by now, validity of the said Demand Drafts has been expired. Learned Counsel for the applicants has, thus, handed over two Demand Drafts of Rs.2.50 lakhs each today in the Court to the Counsel representing Respondent No.2.

6 We have heard learned A.P.P. for Respondent No.1-State. Learned A.P.P. submits that there are no antecedents.

7 We have perused the terms of compromise. It appears that quashing of the First Information Report and the criminal proceedings is sought on the basis of settlement. It appears that there is private transaction between applicants no.1 to 3 and Respondent No.2 and applicant no.4 is brother-in-law of applicant no.1. Applicants no.1 to 3 have borrowed certain amount from Respondent No.2. However, as per the compromise agreement, Respondent No.2 has accepted Rs.5 lakhs towards full and final settlement and accordingly, two Demand Drafts for an amount of Rs. 2.50 lakhs each are handed over to the learned Counsel

appearing for Respondent No.2, in the Court. Learned Counsel for Respondent No.2 has also accepted that the previous Demand Drafts, as referred in the compromise agreement, are now replaced by another two Demand Drafts, since validity of the earlier Demand Drafts came to be expired.

8 In the case of *Gian Singh vs. State of Punjab and others*, reported in *(2012) 10 SCC 303*, the Hon'ble Supreme Court, in para 48, has quoted para 21 of the judgment of the five-Judge Bench of the Punjab and Haryana High Court delivered in *Kulwinder Singh v. State of Punjab (2007) 4 CTC 769*. The five-Judge Bench of the Punjab and Haryana High Court, in para 21 of the judgment, by placing reliance on the judgments of the Supreme court in the cases of *Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551*, *State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335*, *State of Karnataka v. L. Muniswamy (1977) 2 SCC 699*, *Simrikhia v. Dolley Mukherjee (1990) 2 SCC 437*, *B.S. Joshi v. State of Haryana (2003) 4 SCC 675* and *Ram Lal v. State of Jammu and Kashmir (1999) 2 SCC 213*, has framed the guidelines for quashing of the criminal proceedings on the ground of settlement. Clause (c) of the said guidelines is relevant, which is reproduced herein below :

“21 (c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.”

9 The Hon'ble Supreme Court, in para No.61 of the judgment in the case of ***Gian Singh vs. State of Punjab and others (supra)***, has made the following observations:-

“61. 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 victim's 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.”

10 It appears that the parties have arrived at the settlement voluntarily. Respondent No.2 has accepted an amount of Rs. 5 lakhs towards full and final settlement.

11 In view of the above and in terms of the ratio laid down by the Hon'ble Supreme Court in the aforesaid case, we proceed to pass the following order:

(i) Criminal Application is allowed in the following manner:

(a) Crime No. 213/2014, registered with Bazar Peth Police Station, Bhusawal, for the offences punishable under Sections 415, 420, 406 of the Indian Penal Code, is hereby quashed as against applicant no.1- Mazharuddin s/o Kutubuddin Shaikh, applicant no.2- Parvezuddin s/o Mazharuddin Shaikh, applicant no.3- Anisuddin s/o Mazharuddin Shaikh.

(ii) Crime No. 213/2014, registered with Bazar Peth Police Station, Bhusawal, for the offences punishable under Sections 415, 420, 406 of the Indian Penal Code as also Criminal Proceedings bearing RCC No. 207 of 2015, pending on the file of Judicial Magistrate, First Class, Bhusawal, as against applicant no.4- Riyazuddin s/o Kamruddin Shaikh, are hereby quashed.

12 Criminal Application is hereby disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb