

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

CRIMINAL APPLICATION NO. 537 OF 2021

1. Ratnabai W/o Ramkrishna Surase
Age : 50 years, Occu: Housewife
2. Ramkrishna S/o Punjaram Surase
Age : 71 years, Occu: Agriculture
3. Virendra S/o Ramkrishna Surase
Age : 34 years, Occu: Job
4. Balu S/o Ramkrushna Surase
Age : 34 years, Occu: Job

All R/o at Post Deolana, Tq. Kannad,
Dist. Aurangabad

5. Meena W/o Tejrao Dhone
Age : 55 years, Occu: Housewife
R/o Village Chimanapur, Tq. Kannad,
Dist. Aurangabad.
6. Shobha W/o Ashok Nage
Age : 52 years, Occu: Housewife
R/o. Village Sarai, Tq. Kannad ... Applicants

Versus

1. The State of Maharashtra
2. Pallavi W/o Virendra Surase
Age: 31 years, Occu: Housewife and Job
R/o Verul, Tq. Khultabad,
Dist. Aurangabad ... Respondents

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Mr. Rupesh Jaiswal, Advocate for the Applicants
Mr. Sachin J. Salgare, A.P.P. for Respondent No.1 / State
Mr. Pramod Mule, Advocate h/f Mr. S.A. Ambad, Advocate for
Respondent No.2

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th AUGUST, 2021

PER COURT:-

1. With consent of the parties heard finally, at admission stage.
2. This criminal application is filed for quashing of the criminal proceedings on settlement.
3. The applicants are the accused in the criminal proceedings bearing RCC No.196 of 2019 pending before the Judicial Magistrate, First Class, Aurangabad for having committed the offence punishable under Sections 498-A, 325, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.
4. Learned counsel for the applicants submits that applicant no.3-husband and respondent no.2-wife have arrived at an amicable settlement and in terms of the settlement, they have filed petition bearing H.M.P. No.285 of 2020 under Section 13B of the

Hindu Marriage Act for divorce by mutual consent. The said petition is pending before the Civil Judge, Senior Division, Aurangabad. Learned counsel submits that though the crime was registered for the offence punishable under Sections 498-A, 420, 406, 312, 313, 325, 326, 506 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, however, the charge-sheet came to be filed under Sections 498-A, 325, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act only. A copy of the charge-sheet is placed on record, which is marked at Exhibit-B

5. Learned counsel Mr. Jaiswal submits that in terms of ratio laid down by the Hon'ble Supreme Court in case of ***Gian Singh Vs. State of Punjab and another*** reported in ***(2012) 10 SCC 303*** and also in case of ***Parbatbhai Aahir and Ors. Vs. State of Gujrat and others*** reported in ***AIR 2017 SC 4843***, quashing of the criminal proceedings in matrimonial matters is permissible.

6. Learned counsel for respondent no.2 submits that the parties have arrived at an amicable settlement. He submits that respondent no.2 has filed affidavit-in-reply to that effect. Learned counsel submits that due to intervention of the family members

from both the sides, applicant no.3 - husband and respondent no.2 – wife have arrived at an amicable settlement. Learned counsel submits that it is not possible for them to reside together as husband and wife, and accordingly they have also filed the petition bearing H.M.P No. 285 of 2020, which is pending before the Civil Judge, Senior Division, Aurangabad under Section 13B of the Hindu Marriage Act for divorce by mutual consent. Learned counsel submits that respondent no.2 – informant has allegedly sustained injury to her nose, which is grievous in nature, however, at present she has recovered from the said injury. The parties have arrived at an amicable settlement voluntarily with an intention to end their dispute permanently.

7. We have also heard the learned APP for respondent no.1 / State. Learned APP submits that, in the medical report annexed with the police papers, it appears that respondent no.2 has sustained grievous injury to her nose. It has been alleged in the complaint that during the course of quarrel, applicant no. 3 had allegedly assaulted respondent no.2 with iron rod and caused her the said injury. Learned APP admitted that the charge-sheet has been submitted under Sections 498A, 325, 506 read with

Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

8. In case of *Gian Singh Vs. State of Punjab and another* (supra), in para 48, the Hon'ble Supreme Court has referred the observations made in case of *Kulwinder Singh and Ors. Vs. State of Punjab and Anr*, reported in *(2007) 4 SCC 213* in which a five Judge Bench of the Punjab and Haryana High Court has framed the guidelines for quashing for the F.I.R. on the basis of settlement, and guideline (a) is relevant for the present discussion, which is reproduced as under:

“(a) Cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.

9. In case of *Parbatbhai Aahir and Ors. Vs. State of Gujarat and others* (supra), in para no.15, the Hon'ble Supreme Court has summarised the broad principles which emerge from the precedents on the subject for quashing of the proceedings on the basis of settlement. Clauses (i) and (ii) are relevant for the present discussion which are reproduced as under:

(i) Section 482 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 recognises and preserves powers which inhere in the High Court;

(ii) 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 compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

10. In the instant case, though respondent no.2 has sustained the fracture injury to her nose, however, it appears from the reference made in the application that in the heat of anger and during the course of the quarrel, applicant no.3 allegedly assaulted her. We are satisfied that the parties have arrived at an amicable settlement voluntarily. Furthermore, applicant no.3 – husband and respondent no.2 – wife (informant) have also approached the Civil Court for obtaining divorce by mutual consent by filing H.M.P. No.285 of 2020 under Section 13B of the Hindu Marriage Act. A copy of the said petition is placed before us. It appears that due to intervention of the family members from both the sides, the parties have arrived at an amicable settlement and they have decided to end their marital relations permanently.

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

ORDER

- (i) The criminal application is allowed in terms of prayer clause 'B'.
- (ii) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P. Rane