

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

CRIMINAL WRIT PETITION NO. 378 OF 2019

Dattakumar Krushnadas Shah

Age : 57 years, Occ. Service,

R/o. At Village Sarangkhedha,

Tq. Sarangkhedha, Dist. Nandurbar

... Applicant

Versus

1. Ramesh Hanumant Garud,
Age : 66 years, Occ. Retired Forest
Officer, R/o. N-9-D, 78/03,
Shivaji Chowk, Cidco
Nashik

2. The State of Maharashtra
Through Office In-Charge
Sarangkheda Police Station,
Dist. Nandurbar

... Respondents

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Mr.Mukul S. Kulkarni, Advocate for the Applicant

Mr. Pankaj A. Bharat, Advocate for Respondent No.1

Mr. Rajendra V. Dasalkar, A.P.P. for Respondent No.2 / State

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

DATE : 12th AUGUST, 2021

FINAL ORDER :-

1. With consent of the parties heard finally, at admission stage.
2. The applicants is an accused in connection with crime no. 25 of 2019 registered with Sarangkhedha Police Station, District Nandurbar for the offence punishable under Sections 406, 420 of

the Indian Penal Code. At present, the charge-sheet has been submitted and this application is filed for quashing of the criminal proceedings (RCC No.43 of 2018) on the basis of settlement arrived between the parties.

3. The learned counsel for the applicant submits that the father of the petitioner had agreed to sale house property with the informant for total consideration of Rs.2,85,000/- and the agreement of sale in writing was executed to that effect by accepting Rs.,100,000/- . Thereafter, an amount of Rs.1,00,000/- allegedly paid to the petitioner. The learned counsel submits that it has been alleged in the complaint that though respondent no.1 was ready to pay balance amount of Rs.85,000/-, however, the petitioner herein has avoided to execute the sale deed under one or other pretext. Thus, respondent no.1 has filed the complaint alleging the criminal breach of the trust so also cheating. Learned counsel submits that this is an attempt to convert the civil dispute into the criminal proceedings, however, the parties have arrived at amicable settlement.

4. Learned counsel for respondent no.1 Mr. Sawant has filed an affidavit-in-reply of respondent no.1. As per the compromise between the parties, the dispute has been amicably settled and

they do not want to prosecute the litigation. Learned counsel submits that in order to maintain relations in future and due to intervention of the senior reputed persons of the society, they have arrived at amicable settlement. Learned counsel submits that the parties have prepared compromise deed in writing, which is annexed with affidavit-in reply and marked as Exhibit 'R-1'. Learned counsel submits that as per the terms of compromise, the said transaction of sale/ purchase of the house property has been cancelled. By order dated 19.07.2019, this Court had directed to deposit an amount of Rs.1,50,000/- to show his *bona fide*. Learned counsel appearing for the parties submits that it is agreed between the parties that the said amount of Rs.1,50,000/- has to be withdrawn by the petitioner and parties have settled the dispute out side the Court.

3. We have also heard the learned APP for Respondent No.2 / State.

5. In case of *Gian Singh Vs. State of Punjab and another* reported in *(2012) 10 SCC 303*, in para 48, the Hon'ble Supreme Court has referred the observations made in the earlier case of *Kulwinder Singh and Ors. Vs. State of Punjab and Anr*, in which a five Judge Bench of the Punjab and Harayana High Court has

framed the guidelines. Guidelines (b) is relevant for the present case which is reproduced as under:

“(b) Cases pertaining to property disputes between close relations, which are predominantly civil in nature and they have a genuine or belaboured dimension of criminal liability. Notwithstanding a touch of criminal liability, the settlement would bring lasting peace and harmony to larger number of people.

The Hon’ble Supreme Court has further observed that, “to conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.PC. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".

Thus, the 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. : (1) 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the 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 predominatingly civil flavour stand on a 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 the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

5. In the instant case, since the parties have arrived at amicable settlement and worked out the terms of the compromise, which are reduced into writing, the possibility of conviction is remote and bleak and continuation of the criminal case would be an abuse of the Court process. We also find that the settlement as arrived between

the parties is voluntarily and the terms of the compromise are just, fair and reasonable. Thus, considering entire aspect of the case, we proceed to pass the following order.

ORDER

- (i) The criminal application is allowed in terms of prayer clause 'AA'.
- (ii) In terms of compromise arrived at between the parties and since the counsel appearing for respondent no.1, on instructions, has no objection, the petitioner is permitted to withdraw an amount of Rs.1,50,000/- deposited in this Court along with interest accrued thereon
- (iii) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P Rane