

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

9 CRIMINAL APPLICATION NO.850 OF 2021

SHANKAR JAYRAM GANGASAGARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Suryawanshi Govind G.

APP for Respondents: Mr. S P Deshmukh

Advocate for Respondent 2 : Mr.Bhosle Santosh C.

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

Dated: December 06, 2021

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PER COURT :-

1. Leave to amend the prayer clause since during the pendency of this criminal application, charge-sheet has been filed. Amendment be carried out forthwith.
2. Heard finally with consent at admission stage.
3. The applicants/original accused are seeking quashing of the FIR bearing crime No.48 of 2021 registered with Ramtirth Police Station, Tq. Biloli, District Nanded for the offence punishable u/s 498-A, 323, 504, 34 of the Indian Penal Code and also seeking quashing of the criminal proceedings bearing RCC No.71 of 2021 pending before the Judicial Magistrate First Class, Naigaon, District Nanded, on settlement.

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4. Learned counsel for the applicants and the learned counsel appearing for respondent no.2 submits that during the pendency of this criminal application matter was referred for mediation and mediation was successful as per the terms and conditions placed before us.

5. We have carefully gone through the terms of the compromise recorded before the learned Mediator. It is agreed by the parties that the applicant no.1 and respondent no.2 will approach to the Civil Judge S.D. Bhokar for a decree of divorce by mutual consent. Since, parties were not cohabited/stayed together for more than nine months, they have decided to apply to the court for waiver of a period of six months, as the divorce petition is already filed by the applicant no.1 initially before C.J.S.D. Kalyan, which is now transferred to Bhokar and registered as HMP No.240 of 2020. It appears that care has also been taken to pay certain amount to respondent no.2 towards permanent alimony. The applicant no.1 has agreed to pay an amount of Rs.8.00 lacs (Rs. Eight lacs) towards the final settlement

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of all rights. Furthermore, respondent no.2 has agreed that she will withdraw the proceedings of PWDVA No.15 of 2021 filed by her before the Judicial Magistrate First Class, Bhokar. Thus, we are satisfied that parties have arrived at amicable settlement, voluntarily.

6. In the case of ***Gian Singh vs. State of Punjab and others***, reported in ***(2012) 10 SCC 303***, the Supreme Court in paragraph no.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***. A five-Judge Bench of the Punjab and Haryana High Court, in para 21 of the judgment, by placing reliance on the various judgments of the Supreme court, has framed the guidelines for quashing of the criminal proceeding on the ground of settlement. Para 21 of the said case of ***Kulwinder Singh's judgment*** is reproduced by the Supreme Court in para 48 of the judgment in ***Gian Singh***. Clause 21(a) which is relevant for the present discussion reads as under :-

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“21.

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

The Supreme Court in paragraph no.61 of the judgment of Gian Singh (supra) has made 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 predominatingly 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.

7. In view of the above discussion and in terms of the ratio laid down by the Supreme Court in the case of

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Gian Singh (supra), we proceed to pass the following order.

O R D E R

- i. Criminal application is hereby allowed in terms of prayer clause '**B**' and '**B-1**'.
- ii. Criminal application accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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