

1087IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO.1571 OF 2019

SHIRISH SURYAKANT PATHAK AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Joslyn Menezes, Advocate h/f. Mr. P.S. Paranjape, Advocate for applicants
Mr. R.D. Sanap, APP for respondent – State
Mr. A.S. Kulkarni, Advocate h/f. Mr. J.V. Deshpande, Advocate for respondent
no. 2

...

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

DATE : 24TH NOVEMBER 2021

ORAL ORDER :

1. Heard finally with consent, at the admission stage.
2. The applicants – original accused are seeking quashing of the FIR bearing C.R. no. 57 of 2019 registered with Vedant Nagar Police Station, Aurangabad for the offences punishable under section 498-A, 323, 504, 34 of the Indian Penal Code, section 3 and 4 of the Dowry Prohibition Act, 1961 and also seeking quashing of the criminal proceedings i.e. R.C.C. no. 1437 of 2019 pending before the learned Judicial Magistrate First Class, Aurangabad, on settlement.
3. Learned counsel for the applicants submits that the applicant no. 1 and the respondent no.2 have submitted the joint petition under section 13(B) of the Hindu Marriage Act before the Family Court, Aurangabad bearing HMP No. 233 of 2021 for decree of divorce which

is pending before the Principal Judge, Family Court, Aurangabad. It has been agreed between the parties that respondent no.2 will give her consent in quashing of the FIR, as prayed in present application under section 482 of the Code of Criminal Procedure. Respondent no. 2 has also agreed to withdraw petition filed before learned JMFC, Auranabad bearing PWDVA No. 244 of 2019. The learned counsel submits that it is also agreed between the parties to deposit certain amount as a permanent alimony before the Family Court.

4. Learned counsel for respondent no.2 submits that parties have arrived at an amicable settlement in terms of the settlement terms. Applicant no. 1 and respondent no.2 have filed a joint petition bearing HMP No. 233 of 2021 for divorce under section 13(B) of the Hindu Marriage Act, which is pending before the Principal Judge, Aurangabad.

5. Learned counsel for the applicant submits that applicant has deposited Rs. 12,00,000/- before the Family Court, Aurangabad towards permanent alimony of respondent no.2 and respondent no.2 is permitted to withdraw the same after the decree of divorce is granted.

6. We have also heard learned APP for the respondent no. 1 – State.

7. It appears that the parties have arrived at an amicable settlement. We have also perused the affidavit of respondent no.2. It appears that, applicant no.1 and the respondent no.2 have filed the joint

petition for divorce under section 13(B) of the Hindu Marriage Act bearing HMP No. 233 of 2021. In terms of the settlement arrived at between the parties, the respondent no.2 has agreed to give her consent for quashing of the FIR. Furthermore, care has been taken to give substantial amount as permanent alimony to respondent no.2. We find that the parties, particularly, respondent no. 2, has arrived at the settlement voluntarily.

8. In the case of ***Gian Singh vs. State of Punjab and others***, reported in **(2012) 10 SCC 303**, the 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 proceeding on the ground of settlement. Clause (a) of the said guidelines is relevant which is reproduced herein below :

“48.

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

9. 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; (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-dominantly 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. In view of the above settlement arrived at between the parties and in terms of the law laid down by the Supreme Court in above cited case, we proceed to pass the following order :-

ORDER

- I) Criminal Application is allowed in terms of prayer clause (B).
- II) Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]

[V.K. JADHAV, J.]

arp/