

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

944 CRIMINAL APPLICATION NO.1596 OF 2020

ANWIT S/O. AVINASH PAKHALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. K. A. Ingle
APP for Respondent no.1- State: Mr. R. V. Dasalkar
Advocate for Respondent no.2 : Mr. V. H. Humbe

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CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

DATED : 15th DECEMBER, 2021.

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ORDER :

1. By consent of the parties, heard finally at admission stage.
2. The applicant / original accused is seeking quashing of FIR bearing Crime No 150 of 2020 registered with Police Station, CIDCO, Aurangabad for the offence punishable under Sections 420 and 406 of IPC. Further during pendency of the criminal application, charge sheet has been submitted and thus, by carrying out the amendment in the application, the applicant / original accused is also seeking quashing of the proceeding bearing RCC No.1990 of 2020, pending before 8th Judicial Magistrate (First Class), Aurangabad, on the ground that the parties have arrived at amicable settlement.

3. Learned counsel for the applicant submits that the applicant is the owner in possession of Flat No. F-15, situated at Kumbhefal, Taluka and District : Aurangabad in land Gut No. 14, Plot No. 35 and 36. The applicant has agreed to sell the said flat to respondent no.2 for total consideration amount of Rs.16,00,000/- and accordingly the agreement of sale came to be executed. Respondent no.2 has also paid an amount of Rs.1,45,000/- to the applicant as an earnest amount and the remaining amount of Rs.14,60,000/- agreed to be paid after availing loan from the bank and at the time of execution of registered sale deed. Learned counsel submits that the complaint came to be lodged in respect of the said transaction. It has been alleged in the complaint that despite the said agreement, the applicant has not completed the transaction.

4. Learned counsel for the applicant and learned counsel for respondent no.2, submits that the parties have arrived at amicable settlement and accordingly a joint compromise pursis is filed. On perusal of the said joint compromise pursis, the applicant has returned the said earnest amount of Rs.1,50,000/- through Demand Draft bearing No.003255 dated 13/12/2021, drawn on the bank of Baroda, Branch Gen Next Pune to respondent no.2. It further appears that respondent no.2 has

accepted the said amount. It further agreed by the parties that in future respondent no.2 will not file any proceeding in pursuance of the said agreement of sale dated 16/12/2019 against the applicant and the said agreement of sale is henceforth treated as cancelled. Both the parties are also present before the Court and they also accepted the contents of the compromise and signatures thereof.

5. We have also heard learned APP for the respondent-State. Learned APP submits that there are no antecedents of the applicant.

6. In the case of **Gian Singh vs. State of Punjab and others**, reported in **(2012) 10 SCC 303**, the Supreme Court after referring the view expressed by the five Judge Bench of the Punjab and Haryana High Court in **Kulwinder Singh v. State of Punjab (2007) 4 CTC 769** in para no. 61 of the judgment 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.”

In the instant case, even if the allegations made in the complaint are accepted as it is, the said allegations are predominantly of a civil nature. Further the parties have also arrived at amicable settlement. This is a transaction between two private persons for purchase of the flat and since the settlement has arrived at between the parties voluntarily in

terms of the ratio laid down in the above cited case, we proceed to pass the following order.

ORDER

- I) Criminal application is hereby allowed in terms of prayer clause "B & G" .
- II) Criminal application is accordingly disposed of.
- II) We quantify the fees and expenses of learned counsel for respondent no.2, who is appointed advocate, to Rs.2,000/- (Rs. Two thousand) to be paid by the High Court Legal Services Sub- Committee, Aurangabad Bench.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-