

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPLICATION NO. 1812 OF 2021

NITIN KANHUJI TIRMALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
CRIMINAL APPLICATION NO. 1664 of 2020

SHITAL W/O DEEPAK DOLAS AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Ms. Ashwini A. Lomte h/f
Mr. Sudarshan J. Salunke

APP for Respondent-State : Mr. Anand S. Shinde
Advocate for Respondent No.2 : Mr. S. U. Choudhari

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 26th AUGUST, 2021**

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw Criminal Application No. 1664 of 2020. Leave granted. Criminal Application No. 1664 of 2020 is disposed off as withdrawn.

2. In Criminal Application No. 1812 of 2021, by consent heard finally at admission stage.

3. This application is filed for quashing of the criminal proceedings bearing R.C.C. No. 301 of 2021 (The State of Maharashtra v. Nitin and others), which is pending before the Judicial Magistrate, First Class, Aurangabad, on the basis of the settlement arrived at between the parties.

4. Learned counsel for the applicants submits that applicant no.1 and respondent no.2 have arrived at an amicable settlement and the terms of settlement are also worked out. Applicant no.1 has agreed to pay certain lump sum amount to respondent no.2 towards one time maintenance and the parties have agreed to either withdraw or settle the criminal proceedings filed against each other.

5. Learned counsel for respondent no.2-informant submits that applicant no.1 has initiated a divorce proceeding in the Family Court at Aurangabad. However, with the intervention of the relatives, the elders and the Marriage Counselor of the Family Court at Aurangabad, applicant no.1 and respondent no.2 have agreed to convert the petition bearing No. A-150 of 2020 pending before the Family Court into a petition for divorce by mutual consent. Learned counsel for respondent no.2, on instructions from

respondent no.2 who is present in person before the Court, submits that the said petition has now been converted in a petition for divorce by mutual consent. Learned counsel for respondent no.2 submits that applicant no.1 has deposited Rs.2,00,000/- out of the agreed amount of Rs.4,00,000/- towards permanent alimony and upon quashing of the criminal proceedings, agreed to deposit the remaining amount before the Family Court before passing of the decree of divorce. Respondent no.2, in her affidavit, has also stated about the other terms of the settlement.

6. We have also heard learned APP for the respondent State.

7. 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 :

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

8. In case of *Parbatbhai Aahir and Ors. Vs. State of Gujrat and others* reported in *AIR 2017 SC 4843*, in para no.15, the Hon'ble Supreme Court has summarised the broad principles which emerge from the precedents for quashing of the proceedings on the basis of settlement. Para 15 of the said judgment is reproduced herein below:

“15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(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.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar

transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and above;

(ix) Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

9. In the instant case, the parties have arrived at an amicable settlement and agreed to end their marital ties permanently. Even they have converted the marriage petition pending before the Family Court bearing Petition No. A-150 of 2020 as a petition for divorce by mutual consent. We have carefully gone through the affidavit of respondent no.2. It appears that respondent no.2, who is present in person before the Court, has voluntarily arrived at the compromise. The terms of the settlement appear to be reasonable and even applicant no.1 has agreed to pay certain lump sum

amount to respondent no.2 as permanent alimony.

10. Thus, considering the entire aspect of the case and in terms of the ratio laid down by the Supreme Court in the aforesaid cases, we proceed to pass the following order :

ORDER

Criminal Application No. 1812 of 2021 is allowed in terms of prayer clause (E) and disposed off accordingly.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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