

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 CRIMINAL APPLICATION NO.2120 OF 2019

1. Riyaz s/o Sattar Shaikh
 2. Laila Sattar Shaikh
 3. Sattar Lalbhai Shaikh
 4. Afsar Sattar Shaikh
 5. Ruksar Rauf Shaikh
- ...Applicants

Versus

1. The State of Maharashtra
 2. Chandni w/o Riyaz Shaikh
- ...Respondents

.....
Advocate for Applicants : Mr. Shaikh Mazhar A. Jahagirdar
APP for Respondent-State: Mr. R.D. Sanap
Advocate for Respondents : Mr. S.D. Tawshikar h/f Mr. S.F. Patel
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 1st DECEMBER, 2021**

PER COURT:-

1. Heard. Leave to correct the prayer clause "B" to the extent of mentioning R.C.C. number.
2. The applicants-original accused are seeking quashing of F.I.R. bearing No. I-512 of 2018 registered with M.I.D.C. Police Station, Ahmednagar, for the offences punishable under Sections 498-A, 323, 504, 506 and 34 of I.P.C. The applicants are also seeking quashing of proceeding vide R.C.C. No. 119 of 2019 on settlement.
3. Learned counsel for the applicants submits that the parties

have arrived at amicable settlement on intervention of relatives and elder members of both the families. The applicant No.1 and respondent No.2 have decided to live separate permanently considering the bleak possibility of cohabitation.

4. Learned counsel for respondent No.2 submits that due to intervention of relatives and elder members of families, applicant No.1 and respondent No.2 informant have arrived at amicable settlement. Respondent No.2 has given Khula to applicant No.1 and applicant No.1 has paid lump-sum amount of Rs.6,50,000/- (Rupees Six lacs fifty thousand only) to respondent No.2 as maintenance. Thus, respondent No.2 has no objection to grant relief for quashing of proceeding.

5. We have also heard learned A.P.P. for respondent No.1 State.

6. 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.

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

7. 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; (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.”

8. We have carefully gone through the affidavit in reply filed by respondent No.2. It appears that the parties have arrived at amicable settlement and decided to live separate permanently considering the bleak possibility of cohabitation. Further, respondent No.2 has given Khula to applicant No.1 and care was also taken to give lump-sum amount to respondent No.2 towards permanent alimony. Thus, considering entire aspect of the case and in terms of ratio laid down by the Supreme Court in the above cited case, we proceed to pass following order:-

O R D E R

- I. Criminal application is allowed in terms of prayer clause “B”.
- II. Criminal application is disposed of accordingly.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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