

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

CRIMINAL APPLICATION NO.1945 OF 2020

- 1) Prashant Kadu Mali,
Age-28 years, Occu:Agri.,
- 2) Sumanbai Kadu Mali,
Age-58 years, Occu:Household,
- 3) Kadu Vedu Mali,
Age-61 years, Occu:Agri.,

All R/o- At-Waghale, Post-aapkheda,
Taluka-Baglan, District-Nashik,

- 4) Daval Kadu Mali,
Age-31 years, Occu:Business,
- 5) Kavita Daval Mali,
Age-28 years, Occu:Household,

Applicant Nos. 4 and 5 R/o-
At Post-Taharabad, Taluka-Baglan,
District-Nashik,

- 6) Popat Bhika Ahire,
Age-38 years, Occu:Household,
- 7) Sangita Popat Ahire,
Age-35 years, Occu:Household,

Applicant Nos. 6 and 7 R/o-
Shanti Apartment, Bhaygaon Road,
Samarth Nagar, Malegaon,
Taluka-Malegaon, District-Nashik.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Dhule Taluka Police Station,
- 2) Roshni Prashant Mali,
Age-23 years, Occu:Service,
R/o-Seva Hospital, Sakri Road,
Dhule, Taluka and District-Dhule.

...RESPONDENTS

...
Mr. Shivraj B. Kadu Advocate for Applicants.
Mr. K.S. Patil, A.P.P. for Respondent No.1 – State.
Mr. V.P. Raje Advocate for Respondent No.2.
...

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

DATE : 7th DECEMBER, 2021

ORDER :

1. By consent of the parties, heard finally at admission stage.
2. Applicants are seeking quashing of the First Information Report bearing Crime No. 0383 of 2019 registered with Dhule Taluka Police Station, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code, and also seeking quashing of the proceedings bearing R.C.C. No. 33 of 2020 pending before the learned 3rd Judicial Magistrate, First Class, Dhule.

3. Learned counsel for the applicants submits that the parties have arrived at amicable settlement due to the intervention of the respectable members in the family as well as the society. Applicant No. 1 and Respondent No. 2 have decided to stay separately and even they have filed a joint petition for a decree of divorce under Section 13-B of the Hindu Marriage Act before the Family Court, Dhule. The said petition is still pending. Further, the applicant No.1 has agreed to pay certain amount to Respondent No.2 towards her permanent alimony. The compromise terms are worked out separately and the same are placed on record today.

4. Learned counsel for Respondent No. 2 submits that due to intervention of the respectable members of the family, parties have arrived at amicable settlement. It is a matrimonial dispute. Applicant No.1 and Respondent No. 2 have already approached the Family Court, Dhule by filing joint petition for decree of divorce under Section 13-B of the Hindu Marriage Act. Applicant No.1 has agreed to pay an amount of Rs.1,30,000/- (Rupees One Lakh Thirty Thousand) towards her permanent alimony and out of the said amount, an amount of Rs.10,000/- (Rupees Ten

Thousand) has been paid to her. It is further agreed between the parties that on the day of passing of decree of divorce, the balance amount will be paid to Respondent No.2. Learned counsel submits that Respondent No.2 has filed the affidavit to that effect and matter has been amicably settled between the parties.

5. We have carefully gone through the contents of the said compromise *pursis* and affidavit of Respondent No. 2. It appears that parties have arrived at amicable settlement voluntarily and care has been taken to grant certain amount towards permanent alimony to Respondent No.2. Parties have decided to make an end to the litigation pending between them.

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**. 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 :

"21.

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

7. 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 predominately 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. In view of the above discussion and in terms of the ratio laid down by the Supreme Court in the case of **Gian Singh** (supra), we proceed to pass the following order:-

ORDER

- (i) Criminal Application is hereby allowed in terms of prayer clause "**B**".
- (ii) Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

[V.K. JADHAV]
JUDGE

asb/DEC21