

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

CRIMINAL APPLICATION NO.2176 OF 2020

Jitendra s/o Ramesh Patole

Applicant

Versus

01 The State of Maharashtra

02 Ragini w/o Ajay Sharma

Respondents

Mr. N. B.Narwade, advocate for the applicant.

Mr. S. P. Deshmukh, APP for Respondent No.1-State.

Mr. S. R. Zambre, advocate for Respondent No.2.

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

DATE : 26th October, 2021.

PC :

1 Heard finally at the admission stage itself, by consent of learned Counsel for respective parties.

2 The applicant is seeking quashing of the FIR bearing Crime No.0476/2019, registered with MIDC Police Station, Ahmednagar, for the offences punishable under Sections 376, 376 (2) (N) and 506 of the Indian Penal Code, so also, seeking quashing of the proceedings bearing Sessions Case No.405/2019, pending before the Sessions Judge, Ahmednagar, arising out of the said

FIR.

3 Learned Counsel for the applicant submits that the applicant and Respondent No.2-informant have arrived at amicable settlement. The learned Counsel for the applicant, from the allegations made in the complaint, pointed out that there are consensual relations between the applicant and respondent no.2-informant since December 2016 and the said relations remained continued for about two years. Even in the year 2018 i.e. on 17.10.2018, Respondent No.2-informant performed marriage with one Gautam Munot resident of Burudgaon road, Ahmednagar.

4. The learned Counsel submits that in terms of the ratio laid down by the Hon'ble Supreme Court in the case of ***Gian Singh vs. State of Punjab and others***, reported in (2012) 10 SCC 303, though the offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. However, in the instant case, there are no clear-cut allegations of rape as such.

5 The learned Counsel for Respondent No.2 submits that the applicant and Respondent No.2 have filed joint affidavit. The applicant and Respondent No.2-informant have settled their dispute amicably and presently there are cordial relations between them. There was consensual relationship between them and Respondent No.2-complainant has no objection if the proceedings of Sessions Case are quashed and set aside.

6 The learned A.P.P. submits that in terms of clause (e) of para 48 of the judgment in **Gian Singh** (*supra*), the offence of rape falls in the prohibited category and as such, quashing of the proceedings is not permissible.

7 We have carefully gone through the allegations made in the complaint, so also the charge sheet. Respondent No.2-informant was 27 years of age at the time of filing of the complaint. She got married way-back in the year 2008 with one Ajay Suresh Sharma. The present applicant was the friend of her husband Ajay Sharma. In the year 2016, said Ajay Sharma died due to ailment. Respondent No.2-informant has one son and two daughters out of her wedlock with said Ajay Suresh Sharma. It has been further

alleged in the complaint that in the month of December, 2016, present applicant took Respondent No.2-informant with him under the pretext of arranging certain employment for her and performed intercourse with her. It further appears from the allegations made in the complaint that thereafter the consensual sexual relations between them continued till the year 2018. There are certain allegations that on each and every occasion, the applicant has given threats to Respondent No.2-informant during the said period of two years and accordingly she had agreed for sexual relations with him. In the backdrop of these allegations, even on 17.10.2018, Respondent No.2-informant has performed marriage with one Gaurao, resident of Burudgaon road, Ahmednagar. However, said Gaurav has also abandoned the Respondent No.2. Thereafter there are no allegations against the applicant about the commission of rape in any manner.

8 We have carefully perused the contents of the joint affidavit. It appears that the applicant and Respondent No.2 have agreed to settle their dispute amicably and at present they have maintained cordial relations amongst themselves. It is also stated in the joint affidavit that there was consensual relationship between applicant and Respondent No.2-informant. It is an

admitted fact that Respondent No.2-informant has three children out of her first marriage.

9 In the case of **Gian Singh** (*supra*), in para 45, the Hon'ble Supreme Court has referred to the view taken by the Punjab & Haryana High Court in the case of **Kulwinder Sing and others Vs. State of Punjab and another** (2007) 4 CTC 769, wherein the Punjab and Haryana High Court has framed certain guidelines for quashing of the criminal proceedings on settlement. The Hon'ble Supreme Court has referred those guidelines and clause (e) is relevant for the present discussion, which is reproduced herein.

{e} The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-

compoundable.”

10 The Hon’ble Supreme Court has also observed that the settlement or compromise must satisfy conscience of the Court. The settlement must be just and fair besides being free from the undue pressure, the Court must examine cases of weaker and vulnerable victims with necessary caution. It is also concluded by the Hon’ble Supreme Court, that it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Criminal Procedure Code. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., “to prevent abuse of the process of any Court” or “to secure ends of justice”.

11 We are satisfied that the settlement arrived at between the parties is just and fair and free from any pressure. Respondent No.2-informant is having 3 children out of her first marriage and thus considering the future of the said three children of Respondent No.2-informant, it would be just and proper if the settlement is accepted for quashing the proceedings. We do not find that the applicant has taken undue advantage of the situation

and pressurized Respondent No.2-informant to arrive at the settlement.

12 In view of the above and in terms of the ratio laid down by the Hon'ble Supreme Court in the case of Gian Singh (supra), we allow the Criminal Application in terms of prayer clause "B".

13 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb