

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

CRIMINAL APPLICATION NO. 2247 OF 2021

1. Shaikh Ahmed s/o Shaikh Dastagir,
Age : 42 years, Occ. Tailor,
R/o. Bhikapur, Naigaon,
Aurangabad Gramin, Tq. & Dist. Aurangabad.
2. Sher Bano w/o. Ahmed Shaikh,
Age : 34 years, Occu. Household,
R/o. Bhikapur, Naigaon,
Aurangabad Gramin, Tq. & Dist. Aurangabad.
3. Shaikh Dastagir s/o. Usman Shaikh,
Age : 65 years, Occu. Labour,
R/o. Bhikapur, Naigaon, Phulambri,
Aurangabad Gramin, Tq. & Dist. Aurangabad.
4. Banobee w/o. Dastagir Shaikh,
Age : 60 years, Occu. Household,
R/o. Bhikapur, Naigaon, Phulambri,
Aurangabad Gramin, Tq. & Dist. Aurangabad.
5. Habiba w/o. Gauskhan Pathan,
Age : 37 years, Occu. Household,
R/o. Rangar Chowk, Georai, Beed,
Dist. Beed.
6. Gaus Khan s/o. Amanullahkhan Pathan,
Age : 43 years, Occu. Auto Driver,
R/o. Besides Chinteshwar Pathsanstha,
Georai, Dist. Beed.

...Applicants

Versus

1. The State of Maharashtra
2. Shahajana w/o. Ahmed Shaikh,
Age : 26 years, Occu. Household,
R/o. Behind Urdu School,
K.M. Park, Naigaon, Tq. & Dist. Aurangabad.

...Respondents

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Mr. Quadri Tabrezuddin Rahimuddin, Advocate for the applicants
Mr. R. V. Dasalkar, APP for respondent / State
Mr. S. A. Gaikwad, Advocate for respondent no. 2
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**CORAM : V. K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**

DATE : NOVEMBER 15, 2021

ORAL JUDGMENT [Per V. K. Jadhav, J.] : -

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal.

2. Learned Counsel for respondent no. 2 tenders across the bar affidavit-in-reply of original complainant. The same is taken on record.

3. The applicants are seeking quashing of the FIR bearing No. 0175/2019 dated 05.08.2019 registered with Phulambri Police Station, Aurangabad, for the offence punishable u/s 498A, 323, 504, 506 r/w 34 of the IPC and also seeking quashing of the proceedings bearing RCC No. 134/2019 pending before the learned Judicial Magistrate First Class, Phulambri, Dist. Aurangabad. The applicants are the accused persons in connection with the aforesaid crime and they are seeking quashing of the FIR and the proceedings on

settlement. The learned Counsel for the applicants submits that due to the intervention of the relatives and the elderly persons of the family, the parties have arrived at an amicable settlement and they have also prepared the compromise deed. Respondent no. 2-wife has initiated the Khula Proceedings against applicant no. 1 and the matter is now compromised by executing the compromise deed dated 21.08.2021. Even the said compromise deed has been filed before the learned Judicial Magistrate First Class, Aurangabad in a pending case bearing PWDVA No. 509/2019, under the provisions of the Protection of Women from Domestic Violence Act, 2005.

4. Learned Counsel for respondent no. 2 submits that as per the said compromise deed dated 21.08.2021, it has been agreed that the applicant no. 1 herein shall pay an amount of Rs. 70,000/- towards one time maintenance amount and shall also transfer plot no. 124 from Gut No. 175, adm. 600 sq.ft., situated at Naigaon, Tq. & Dist. Aurangabad in favour of respondent no. 2-wife. Accordingly, applicant no. 1 has executed a notarized sale deed of the said plot. It has also been agreed in the said compromise deed that for executing a registered sale deed for the plot in question, the applicant no. 1 would give the necessary consent. The learned Counsel for respondent no. 2 has also pointed out that as per the compromise deed dated

21.08.2021, the applicant no. 1 has deposited an amount of Rs.70,000/- towards one time maintenance amount before the learned Judicial Magistrate First Class, Arangabad, in the said proceedings bearing PWDVA No. 509/2021 and as agreed between the parties, respondent no. 2 is permitted to withdraw the said amount after the present crime is quashed in terms of the settlement. The learned Counsel for respondent no. 2 submits that the matter has been amicably settled due to intervention of the relatives and the elderly persons from both the families.

5. We have also heard learned APP for respondent/State.

6. The applicants are the accused in the criminal proceedings bearing RCC No. 134/2019. They have arrived at amicable settlement and as per the compromise deed. The care has been taken to give certain amount to respondent no. 2-wife for permanent alimony. It appears that the parties have arrived at settlement voluntarily.

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 :

“48.

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

(b) to (f)

8. The Supreme Court 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-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.”

9. In view of the above and in terms of the ratio laid down by the Hon'ble Supreme Court in **Gian Singh** (supra), the criminal application is allowed in terms of prayer clause 'B'.

10. Rule is made absolute in the aforesaid terms.

[SANDIPKUMAR C. MORE]
JUDGE

[V. K. JADHAV]
JUDGE