

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

CRIMINAL APPLICATION NO. 2393 OF 2020

01 Nandkumar s/o Baburao Tawade

02 Yogesh s/o Prabhakar Borse

Applicants

Versus

01 The State of Maharashtra

02 Sudhakar Vikram Phad

Respondents

Mr. A. M. Manglave, advocate holding for Mr.A. A. Yadkikar,
advocate for the applicants

Mr. K. S. Patil, APP for Respondent No.1-State.

Mr. S. J. Solunke, advocate for Respondent No.2.

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

DATE : 25th November, 2021.

PC :

1 Leave to correct title clause.

2 By consent, application is heard finally at the stage of
admission.

3 Applicants – original accused are seeking quashing of
the First Information Report No 324/2020, registered with Pundlik
Nagar Police Station, Aurangabad, for the offences punishable

under Sections 406 and 420 read with Section 34 of the Indian Penal Code. During pendency of the Criminal Application, charge sheet has been submitted and applicants, by carrying out necessary amendment in the prayer clause, are also seeking quashing of the criminal proceedings bearing RCC No.1510 of 2021, pending before the Judicial Magistrate, First Class, Aurangabad.

4 During the pendency of this application, by consent, the parties were referred to mediation and the mediation is successful. The parties have arrived at an amicable settlement. Applicant no.1 – Nandkishor is the borrower and applicant no.2, as referred in the complaint, is the middleman.

5 Learned Counsel for the applicants and Respondent No.2 submit that the terms of amicable settlement, arrived at between applicant no.1 and Respondent No.2 for resolution of the dispute between them, are worked out before the Mediator. Applicant no.1 had borrowed an amount of Rs.15,00,000/- for his business need, from Respondent No.2 and executed two agreements of sale in respect of 2 flats C-1 and C-2 in Nishigandha Apartment in favour of Respondent No.2. On 12th March, 2019, since applicant no.1 has paid an amount of Rs.7.50 lakhs to

Respondent No.2, agreement of sale in respect of flat no. C-1 has been immediately cancelled by the parties. So far as balance of amount is concerned, parties have arrived at amicable settlement for resolution of dispute between them by paying an amount of Rs.11 lakhs towards full and final settlement of the claim by applicant no.1 to Respondent No.2. Accordingly, an amount of Rs.11 lakhs has been paid by applicant no.1 to Respondent No.2 under two Demand Drafts dated 22nd October, 2021, for an amount of Rs. 6 lakhs and Rs. 5 lakhs, respectively. Further, Respondent No.2 has also agreed unconditionally to withdraw the Civil Suit bearing RCS No. 116/2020, instituted by him and pending before the Civil Judge, Senior Division, Aurangabad. Accordingly, applicants and Respondent No.2 have prayed for quashing of the First Information Report so also criminal proceedings on the basis of settlement.

6 We have also heard learned A.P.P. for Respondent-State. Learned A.P.P. submits that so far as applicants are concerned, there are no antecedents.

7 It appears that applicant no.1 has borrowed an amount of Rs.15 lakhs for his business need. It was purely a

transaction between two persons for borrowing the amount to meet the business need. It further appears that applicant no.1 and Respondent No.2 have arrived at amicable settlement and the balance of amount to the tune of Rs. 11 lakhs towards full and final settlement has been accepted by Respondent No.2. They have agreed to withdraw the pending proceedings between them including the Civil Suit instituted by Respondent No.2 against applicant no.1 for certain relief in respect of the flat, which was the subject matter of the agreement of sale.

8 In the case of *Gian Singh vs. State of Punjab and others*, reported in *(2012) 10 SCC 303*, the Hon'ble 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 proceedings on the ground of settlement. Clause (c) of the said guidelines is relevant, which is reproduced herein below :

“21 (c) Cases of dispute between old partners or business concerns with dealings over a long period which are predominantly civil and are given or acquire a criminal dimension but the parties are essentially seeking a redressal of their financial or commercial claim.”

9 The Hon'ble 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.”

10 In the instant case, dispute is between two private persons in respect of the amount borrowed and the said dispute is amicably settled between them; *vis-a-vis* there are no antecedents.

11 Thus, considering the entire aspects of the case and in terms of the ratio laid down by the Hon'ble Supreme Court in the

case of **Gian Singh**, (*supra*), we proceed to pass the following order:

(I) Criminal Application is allowed in terms of prayer clauses “B” and “DD”.

12 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb