

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

50 CRIMINAL APPLICATION NO.2494 OF 2020

LAXMAN HANUMANT SURVASE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Shri Amol B. Chalak
APP for Respondent No.1-State : Shri A.V.Deshmukh
Advocate for Respondent No.2 : Shri R.A.Jaiswal h/f.
Shri Amol T. Deshmukh

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**CORAM : V.K.JADHAV &
M.G.SEWLIKAR, JJ.**

DATE: 8th March, 2021

PER COURT:-

1. Heard finally with consent of the parties at the admission stage.
2. This application pertains to quashing of FIR No.164 of 2019 and the proceedings bearing R.C.C. No.2172 of 2019 pending before the Court of Judicial Magistrate, First Class, Aurangabad, against the applicants for the offence punishable under Sections 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code.
3. The learned counsel for the applicants submits that during

the pendency of this criminal application, the parties have arrived at amicable settlement due to intervention of the elderly persons.

4. The learned counsel for respondent No.2 submits that a document containing terms and conditions of compromise is already submitted in the Petition bearing No.225 of 2019 filed before the Family Court, Aurangabad. The learned counsel for respondent No.2 submits that applicant No.1 and respondent No.2 filed petition under the Hindu Marriage Act for divorce by mutual consent in the Family Court vide petition bearing No.225 of 2019. Respondent No.2 has submitted affidavit to that effect and the same is taken on record.

5. In a case of ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and ors Vs. State of Gujarat and another*** reported in ***AIR 2017 Supreme Court 4843***, the Hon'ble Supreme Court in paragraph no.15 of the Judgment has laid down broad principles which emerge from the precedents on the subject and summarized in the following propositions :-

- “15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :
- (i) [Section 482](#) preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;
 - (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of [Section 320](#) of the Code of Criminal Procedure, 1973. The power to quash under [Section 482](#) is attracted even if the offence is non-compoundable.

- (iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under [Section 482](#), the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;
- (iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;
- (v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;
- (vi) In the exercise of the power under [Section 482](#) and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;
- (vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
- (viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;
- (ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
- (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-

being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

6. In terms of clause no.(ii) of the said proposition, the invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable. In terms of clause no.(v) the proposition is summarized that the decision as to whether a complaint or FIR should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated. In terms of clause no.(ix) of the said propositions, the Supreme Court has also considered that in such a case, High Court may quash criminal proceedings if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.

7. In the instant case, since the parties have arrived at amicable settlement and in terms of the said settlement applicant No.1 and respondent No.2 have decided to get separated in view of the petition submitted before the Family Court for divorce by mutual consent and if the same has been done after the intervention of elderly persons from both the families, we are inclined to allow this criminal application. Hence, the following order.

ORDER

- I) Criminal Application is allowed in terms of prayer clause-'B'.
- II) Criminal Application is accordingly disposed of.

(M.G.SEWLIKAR)
JUDGE

(V.K.JADHAV)
JUDGE

SPT