

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

CRIMINAL APPLICATION NO. 3218 OF 2019

Manjusha W/o Arun Damkondwar
Age 51 Years, Occu.: Household,
R/o. Geeta Nagar, Nanded,
Dist. Nanded.

.... Applicant

Versus

1. The State of Maharashtra
Through Police Station Kandhar,
Dist. Nanded.
2. Maroti S/o Ramrao Beldare,
Age -31 Years, Occu. : Agriculture,
R/o. Kurula, Tq. Kandhar,
Dist. Nanded.

.... Respondents.

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Mr. Kunal A. Kale, Advocate for Applicant
Mr. Mahendra M. Nerlikar, APP for Respondent No.1 / State
Mr. M.K.Bhosle, Advocate for Respondent No.2

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 29th SEPTEMBER, 2021**

PER COURT:-

1. We have heard learned counsel for the applicant for some time.

2. The applicant is an accused in connection with the crime no. 23 of 2013 registered with Kandhar Police Station, District Nanded for the offence punishable under Sections 420, 468, 471, 406 of the Indian Penal Code. At present, fpre

3. The applicant is seeking quashing of FIR so also the criminal proceedings on settlement.

4. As per the allegations in the complaint, respondent no.2-informant has purchased the Emu birds from the applicant-accused for the reason that the applicant-accused has given assurance that she would purchased the eggs so also birds. Respondent no.2-informant has availed a loan from the I.D.B.I. Bank for purchasing the Emu birds from the applicant-accused and also paid substantial amount to the applicant-accused for the same. It has been alleged in the complaint that though assurance was given by the applicant-accused to respondent no.2-informant, she neither purchased the eggs, nor the birds.

5. Learned counsel for the applicant-accused has pointed out that the applicant and respondent no.2 have arrived at an amicable settlement and they have prepared a mutual deed of settlement.

6. Learned counsel for respondent no.2-informant submits that in terms of the said deed of settlement, it was agreed between the parties that the applicant-accused will pay Rs.7,30,000/- to respondent no.2 towards one-time settlement amount for compensation on account of non-purchasing of Emu eggs. Learned counsel submits that the applicant-accused has given a cheque bearing no.477033 dated 18.09.2019 of Rs.7,30,000/- to respondent no.2 in presence of the witnesses.

7. The learned counsel for the applicant-accused and the learned counsel appearing for respondent no.2 submits that they have settled their dispute amicably due to intervention of the respected senior persons of the society and now there is no enmity between them. Furthermore, learned counsel for respondent no.2 submits that respondent no.2 is not interested to prosecute RCC No.101 of 2013 pending before the Judicial Magistrate, First Class, Kandhar, District Nanded.

8. Learned APP submits that in terms of the order dated 20.01.2020, the learned APP has taken instructions from the Investigating Officer and so far as the applicant-accused before the Court is concerned, there are no antecedents.

9. 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 has framed the guidelines for quashing of the criminal proceeding on settlement by exercising the powers under Section 482 of the Criminal Procedure Code. In the instant case, there was dispute in respect of the purchase of Emu birds and consideration paid thereof, which is predominantly civil in nature. In the given set of allegations, we hardly find the touch of criminal liability. In para No.61 of the case *Gian Singh* (supra), the Hon'ble Supreme Court 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. : (1) 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the 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 predominatingly civil flavour stand on a 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 the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

10. We have carefully gone through the deed of settlement. It appears that respondent no.2 has received huge amount as compensation as per the contents of the settlement. The parties have arrived at an amicable settlement due to intervention of the respected senior persons of the society. There are no antecedents.

11. Thus, considering the entire aspect and in term of the ratio laid down by the Hon'ble Supreme Court in the cited case, we proceed to pass the following order:

ORDER

- (i) The criminal application is allowed in terms of prayer clause "C"
- (ii) The criminal application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE