

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

CRIMINAL APPLICATION NO. 3416 OF 2019

01 Sudhir Sahebrao Shirsath

02 Subhash Ramdas Kuwar

03 Satyendra Ramdas Kuwar

04 Anjali Sudhir Shirsath

05 Nita Sunil Ahire

Applicants

Versus

01 The State of Maharashtra

02 Supriya Pratik Shirsath

Respondents

Mr. Mohit S. Shah, advocate for applicants

Mr. R. D. Sanap, APP for Respondent No.1.

Mr. L. S. Mahajan, advocate for Respondent No.2.

**WITH
CRIMINAL APPLICATION NO. 2201 OF 2021**

01 Pratik Sahebrao Shirsath

02 Sahebrao Soma Shirsath

03 Rekhabai Sahebrao Shirsath

Applicants

Versus

01 The State of Maharashtra

02 Supriya Pratik Shirsath

Respondents

Mr. A. R. Syed, advocate for applicants.

Mr. R. D. Sanap, A.P.P. for Respondent No.1.

Mr. L. S. Mahajan, advocate for Respondent No.2.

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

DATE : 25th November, 2021.

PC :

1 By consent, both the applications are heard finally at the admission stage.

2 Applicants-original accused are seeking quashing of the First Information Report in Crime No.173/2019, registered with Shirpur Police Station, District Dhule, for the offences punishable under Sections 498A, 313, 323, 504 and 506 of the Indian Penal Code and under Sections 3 & 4 of the Dowry Prohibition Act. During pendency of these applications, charge sheet has been submitted only for the offences punishable under Sections 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3 & 4 of the Dowry Prohibition Act. Section 313 of the IPC has been dropped. Applicants are also seeking quashing of the criminal proceedings by carrying out necessary amendment in the prayer clause. The applicants-original accused are seeking quashing of the First Information Report and the Criminal proceedings on the basis of the settlement arrived at between the parties.

3 Learned Counsel for the applicants submit that during pendency of these Criminal Applications, this Court has referred the parties to the mediation and accordingly, the parties have discussed the issues before the Mediator and resolved to settle the dispute between them amicably. Though the proceedings are pending and the report of Mediator is shown to be awaited, during the intervening period, the parties have amicably settled the dispute by deciding to live separately by mutual consent. It was also decided between them that all the proceedings, lodged by either of the parties, would be withdrawn.

4 Learned Counsel for Respondent No.2 submits that applicant no.1 (husband) in Criminal Application No.2201 of 2021 and Respondent No.2 have jointly filed an application bearing HMP No. 198 of 2021 under Section 13-B of the Hindu Marriage Act on 29th June, 2021, in terms of the settlement arrived at between the parties. It is informed that the said HMP is still pending. Learned Counsel for Respondent No.2 submits that Respondent No.2 has already withdrawn the proceedings filed under the provisions of Protection of Women from Domestic Violence Act, 2005, in consonance with the aforesaid settlement. Learned Counsel for Respondent No.2 , on instructions, submits

that it was agreed between the parties to pay an amount of Rs.5,00,000/- (Rs. Five lakhs) towards permanent alimony to Respondent No.2 and out of the said amount, certain amount has been paid to Respondent No.2. Learned Counsel for Respondent No.2 submits that the settlement arrived at between the parties is voluntary and with the sole purpose that Applicant No.1-husband in Criminal Application No.2201 of 2021 and Respondent No.2-wife shall lead peaceful life in future.

5 We have also heard the learned A.P.P. for Respondent-State.

6 We have carefully gone through the complaint and perused the charge sheet. It appears that in the charge sheet, offence under Section 313 came to be dropped and the charge sheet is filed for the offences punishable under Sections 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code as also under Sections 3 & 4 of the Dowry Prohibition Act, 1961. We have also carefully gone through the affidavit-in-reply filed by Respondent No.2. Respondent No.2 has stated that applicant no.1 and Respondent No.2 have agreed for mutual separation and they have arrived at the settlement amicably. In terms of the said

settlement, even applicant no.1 and Respondent No.2 have moved before the Civil Court by filing HMP No.198/2021 under Section 13-B of the Hindu Marriage Act for mutual divorce and the said HMP is pending before the Civil Judge, Senior Division, Dhule. In terms of the settlement, Respondent No.2 has withdrawn the proceedings initiated under the provisions of Protection of Women from Domestic Violence Act.

7 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 proceeding on the ground of settlement. Clause (a) of the said guidelines is relevant which is reproduced herein below :

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

8 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.”

9 In view of the above position 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 Applications No. (1) 3416 of 2019 and (2) 2201 of 2021 are hereby allowed.

(ii) Criminal Application No.3416 of 2019 is allowed in terms of prayer clause “B-1”.

(iii) Criminal Application No. 2201 of 2021 is allowed in terms of prayer clause “C-1”.

10 Both the Criminal Applications are accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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