

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 39 OF 2021**

1. Mr. Ajaysing Krushnapalsing Chauhan
Age : 35 years, Occu. : Service
2. Mrs. Savita alias Savitridevi
Krushnapalsing Chauhan
Age : 58 years, Occu. : Housewife
3. Mr. Krushnapalsing Narendrasingh
Chauhan
Age : 61 years, Occu. : Retired
1 to 3 R/o. Krushnakunj Colony no.2,
Ganesh Nagar, Bopkhel, Pune.

...Petitioners

Versus

1. The State of Maharashtra
At the instance of Dighi Police Station,
Pune
2. Mr. Pooja Ajaysing Chauhan
Age : 34 years, Occu. : Service
R/o. A-1, Broadway Avenue, Santipark,
Mira Road, Thane.

...Respondents

Mr. Saurabh D. Butala, for the Petitioners.
Mrs. S. D. Shinde, APP for the State/Respondent no.1.
Ms. Sandhya A. Mailagir, for Respondent no.2.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON: 24th JUNE, 2021.
PRONOUNCED ON: 8th JULY, 2021.**

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, is filed seeking to quash and set aside Sessions Case No.831 of 2016, arising out CR No.190 of 2015, registered with Dighi Police Station, Pune, pending on the file of the learned Sessions Judge, Pune, for the offences punishable under Sections 313, 323, 406, 498(A), 504, 506 read with 34 of the Indian Penal Code, 1860 ("the Penal Code"), in view of the settlement arrived at between the parties.

3. The brief facts leading to this petition can be stated as under:

(a) The marriage of petitioner no.1 Ajaysing was solemnized with respondent no.2 Mrs. Pooja on 24th April, 2012. Petitioner nos.2 and 3 are the in-laws of respondent no.2. The marriage was afflicted with discord. On 27th November, 2015. Respondent no.2 – the first informant lodged a report with Mira Road Police Station alleging *inter alia*, that the petitioners subjected her to cruelty in order to coerce her to meet an unlawful demand of Rs.45,00,000/- and petitioner no.3 Krushnapalsing, her father-in-law, kicked her in the abdomen, resulting in miscarriage. Respondent no.2 also instituted proceedings under Protection of Women From Domestic Violence

Act, being OMA No.321 of 2015, before the Judicial Magistrate, First Class, Thane. A petition for divorce on the ground of cruelty was also instituted in the Court of Civil Judge, Senior Division, Thane.

(b) The parties were counselled. The petitioner and respondent no.2 thus decided to amicably resolve all the disputes. The petitioner and respondent no.2 agreed that the marriage be dissolved by a decree of divorce by mutual consent and pending proceedings, including the Sessions Case No.831 of 2016, be disposed of on the basis of the settlement. Hence, the present petition.

4. A copy of the Consent Terms filed before the learned Judicial Magistrate, First Class, Thane, in OMA No.321 of 2015, is annexed to the petition. Paragraph nos.2 to 8 thereof read as under:

“2. Both the parties are withdrawing allegation made by them against each other in every proceeding.

3. The Respondent no.1 is ready to pay Rs.23,00,000/- (Rupees Twenty Three Lakhs only) to the applicant in two installment.

4. The Respondent no.1 is giving cheque of Rs.10,00,000/- (Rupees Ten Lakhs only) Cheque No.000003 of Kotak Mahindra Bank, dt.14/2/2020 today to the applicant.

5. The Respondent no.1 will file petition for quashing of FIR No.190/2015 registered with Dhigi Police Station before the Hon'ble Bombay High Court. The applicant will file her consent affidavit before the Hon'ble High Court for quashing.

6. The Respondent no.1 will give Demand Draft of pending amount of Rs.13,00,000/- (Rupees Thirteen Lakhs only) on the day of quashing before the Hon'ble High Court to the applicant.

7. that the applicant will withdraw the D. V. Case No.321/2015 pending before the Hon'ble J.M.F.C., Court after the quashing order.

8. The applicant & respondent no.1 will convert the Divorce Petition No.1004/2018 in mutual Divorce Petition u/s.13(b) of the H.M. Act."

5. Respondent no.2 Mrs. Pooja has also filed an affidavit-in-reply. Respondent no.2 has made the following assertions therein.

"6. I say that, in due course, we i.e. the Applicants & myself decided to jointly resolve the issue and entered into compromise. Accordingly, on 14/02/2020 we both have signed the consent term before the Ld. J.M.F.C. Court at Thane in OMA No.321/2015 and Application was made by us for conversion of Petition u/s.13(B) of Hindu Marriage Act on the ground of Mutual Consent before the Civil Judge Senior Division, Thane, in Petition No.1004/2018.

7. I say that, as per terms, the Applicant No.1 has agreed to pay a sum of Rs.23,00,000/- (Rupees Twenty Three Lakhs only) to me in two installments. The Applicant no.1 has given cheque of Rs.10,00,000/- (Rs. Ten Lakhs only) bearing Cheque number 000003 dated 14/2/2020 of Kotak Mahindra Bank Ltd. to me on 14/02/2020. I say that I have received the same and encash the same. I say that, today Applicant No.1 given me Demand Draft No.053882 dated 16/10/2020 of Rs.13,00,000/- (Rs.Thirteen Lakhs only) of Kotak Mahindra Bank.

8. I say that, it is agreed between the Applicant No.1 and me that Applicants shall apply to this Hon'ble High Court for quashing the Sessions Case No.831/2016 and I undertakes before the Court that I shall not prosecute further in the above said criminal proceeding and also I shall extend my co-operation to quash the criminal proceeding before this Hon'ble Court."

6. By an order dated 10th December, 2020, this Court had recorded that pursuant to the resolution of matrimonial

dispute respondent no.2 voluntarily desired to put an end to all the proceedings. The consent of respondent no.2 to quash the prosecution, being Sessions Case No.831 of 2016, was specifically recorded. Since one of the offences arrayed against the petitioners is punishable under Section 313 of the Penal Code, the Court was of the view that the parties were required to be heard on the justifiability of the prayer for quashment of the prosecution, especially for the offence punishable under Section 313 of the Penal Code.

7. In the meanwhile, respondent no.2 has filed an additional affidavit in the context of the charge for the offence punishable under Section 313 of the Penal Code. Paragraph nos.3 to 5 of the additional affidavit read as under:

“3. I say that, in earlier affidavit I have given my no objection to grant all reliefs in favour of the Applicant mentioned in the aforesaid petition.

4. I say that the incident which was took place on 2/10/2015 and the Applicant No.3 who is my father-in-law had kicked on my stomach and thereafter on 12/10/2015 my child was aborted in the hospital. The Applicant no.3 has kicked on my stomach but not with the intention to abort the child. Since the matter is amicably settled between both the parties, misunderstanding also cleared by the Applicants and Respondent no.2 that the Applicant no.2 did not had any intention to hurt the Respondent no.2.

5. I say that, in the present affidavit I am giving specific consent to quash and set aside chargesheet in FIR bearing C.R.No.I-190/2015 against my husband and in laws u/s.313, 323, 498(A), 406 and 34 of I.P.C. with Dighi Police Station, Pune.”

8. In the aforesaid backdrop, we have heard Mr. Butala, the learned Counsel for the petitioner, Mrs. Shinde, the learned APP for the State/respondent no.1 and Ms. Mailagir, the learned Counsel for respondent no.2.

9. Mr. Butala, took the Court through the FIR, medical record, the consent terms and the affidavit of respondent no.2. It was urged that the parties have voluntarily decided to put an end to all the disputes. Petitioner no.1 and respondent no.2 have agreed to dissolve the marital bond. The petitioners have also parted with a sumptuous amount of Rs.23,00,000/- (Rs. Twenty-three lakhs only) by way of provision for respondent no.2. In the circumstances, according to Mr. Butala, the continuation of the prosecution would be an exercise in futility. Notwithstanding the fact that the petitioners have been arraigned for the offence punishable Section 313 of the Penal Code, in the peculiar circumstances of the case, where the marital dispute is resolved once and for all, there would be no impediment to quash the Sessions Case No.831 of 2016, urged Mr. Butala.

10. It is trite that where the parties have settled the dispute, especially in cases which have a predominantly civil flavour, arise out of commercial transaction or matrimonial and family

disputes, and all the disputes have been resolved, the Court would be justified in quashing and setting aside the first information report and consequent prosecution, so as to secure the ends of justice and prevent the abuse of the process of the Court. In such a situation, the continuation of the prosecution, the possibility of which ending in a conviction is extremely remote and bleak is considered oppressive and prejudicial to the parties. The fact that continuation of such a prosecution would be a futile exercise also weighs with the Court. The Courts thus lean in favour of the quashment of the FIR/prosecution so as to prevent the abuse of the process of the Court and secure the ends of justice. The fact that the offence is non-compoundable and of serious nature, entailing punishment for a term, does not operate as a hindrance in exercising inherent jurisdiction.

11. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Gian Singh vs. State of Punjab***¹, wherein a Three Judge Bench of the Supreme Court, considered the relative scope of the provisions contained in Section 482 and Section 320 of the Code and expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

1 (2012) 10 Supreme Court Cases 303.

“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 FIR 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 a 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 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 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

12. A Two Judge Bench of the Supreme Court in the case of *Narinder Singh and others vs. State of Punjab and another*² considered the question in the context of the prayer for quashment of the prosecution for the offence punishable under Section 307 of the Penal Code. It was observed, *inter alia*, that the mere invocation of the penal provision contained in Section 307 of the Penal Code can not, by itself, be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. The Court should examine the material on record so as to ascertain the possibility of proving the charge, at the trial, or whether the charge under Section 307 of the Penal Code was unjustifiably arrayed against the accused. The principles were summed up in paragraph 29 of the said judgment as under:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

2 2014 (6) SCC 466.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to

accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

(emphasis supplied)

13. The question again came up for consideration before the Supreme Court in the case of *State of Madhya Pradesh vs. Laxmi Narayan and others*³. A Three Judge Bench of the Supreme Court, adverted to the previous pronouncements including the propositions in the case of *Narinder Singh* (supra)

3 (2019) 5 SCC 688.

extracted above and clarified the legal position in the following terms:

“15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in the case of *Narinder Singh* (supra) should be read harmoniously and to

be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

14. Mr. Butala, the learned Counsel for the petitioner, banking upon the aforesaid pronouncements, made an earnest endeavour to demonstrate that, in the case at hand, the charge for the offence punishable under Section 313 of the Penal Code, being wholly groundless, the Court would be justified in quashing the Sessions Case No.831/2016. A strenuous effort was made to show that the attendant circumstances, the medical reports and the contemporaneous statements and conduct of respondent no.2 – first informant and her parents, as reflected from their statements recorded during the course of investigation, do not sustain the charge under Section 313 of the Criminal Procedure Code (“the Code”). Thus, according to Mr. Butala, the mere inclusion of the charge for the offence punishable under Section 313 of the Code would not be an impediment in quashing the prosecution.

15. To lend support to this submission, Mr. Butala placed a strong reliance on a judgment of the learned Single Judge of the Delhi High Court in the case of *Bhoop Singh & Ors. vs. State & ors.*⁴, wherein in the backdrop of the facts of the said case and the propositions in the case of *Glan Singh* (supra), *Narinder Singh* (supra) and *B. S. Joshi vs. State of Haryana*,⁵ the learned Single Judge was persuaded to quash the prosecution for the offence punishable under Section 313 of the Code. It was observed, *inter alia*, as under:

11. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of *B. S. Joshi v. State of Haryana (2003) 4 SCC 675* the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.c. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

12. In the light of the aforesaid, this Court is of the view that notwithstanding the fact that the offence under Section 313 IPC is a non-compoundable offence, there should be no impediment in quashing the FIR under this section, if the

4 2016 SCC Online Del 1975.

5 (2003) 4 SCC 675.

Court is otherwise satisfied that the facts and circumstances of the case so warrant. Apparently, the penal Section 313 Cr.P.C. has been added in the present case on the basis of allegations but there is no evidence on record.”

16. Reliance was also placed on another judgment of a learned Single Judge of the High Court of Jharkhand in the case of *Manoj Kumar Bhakat vs. The State of Jharkhand & anr.*⁶, wherein, in the facts of the said case, the learned Judge opined that the opposite party no.2 therein had never been alleged to have assaulted the victim with a view to cause miscarriage. Under the circumstances, it was held, the offence punishable under Section 313 of the Penal Code would never get attracted.

17. We have given anxious consideration to aforesaid submissions. It is imperative to note that in the first information report, the first informant – respondent no.2 alleged, in clear and explicit terms, that on 2nd October, 2015, she was subjected to cruelty in order to coerce her to meet the unlawful demand of Rs.45,00,000/-. She retorted that she was carrying pregnancy of three months lest she would have earned and met the unlawful demand. Thereupon, the petitioners abused and assaulted her. There is a specific allegation that petitioner no.3 – father-in-law kicked her on the abdomen, resulting in bleeding. On her request, the petitioners took her to Vinod

6 2012 SCC Online Jhar 128.

Memorial Hospital on the condition that she should not disclose the said incident. Thus, though she informed her mother that there was bleeding yet she did not inform her that she was assaulted.

18. From the perusal of the statements of Dr. Suchita Milind Yeole, who runs Vinod Memorial Multi Speciality Hospital, Dr. Satish Shankar Shendge, who runs Suyog Diagnostic Centre, and the Early Antenatal Scan report dated 2nd October, 2015, it becomes evident that respondent no.2 was taken to Vinod Memorial Hospital and Suyog Diagnostic Centre on 2nd October, 2015. The USG revealed the following impressions:

“Single live intrauterine pregnancy with gestational age of 11 weeks & 4 days.
Mild Acute Subchorionic hemorrhage.”

Indisputably, respondent no.2 suffered a miscarriage and eventually the pregnancy was terminated on 12th October, 2015.

19. Mr. Butala, the learned Counsel for the petitioner would urge that the allegation that respondent no.2 suffered miscarriage on account of kick blow by petitioner no.3 is inherently improbable. Two circumstances were pressed into service. First, in the NC case, which was reported on 6th October, 2015, the parents of respondent no.2 did not allege that respondent no.2 was assaulted on the abdomen resulting

in bleeding. Second, there was inordinate delay in lodging the FIR.

20. We are afraid to accede to these submissions on behalf of the petitioners, at this stage. The material, to which we have adverted to above, especially the statements of the medical officers and medical reports, lend *prima facie* support to the claim of respondent no.2 that on account of the assault by petitioner no.3 there was bleeding and she was taken to hospitals on 2nd October, 2015. Had the matter remained at that, different considerations would have come into play. In the additional affidavit, filed by respondent no.2, the relevant part of which is extracted above, respondent no.2 has made a categorical statement that on 2nd October, 2015, petitioner no.3– father-in-law had kicked her on stomach and thereafter the child was aborted on 12th October, 2015. Indeed, the Respondent no.2 further affirmed that though the petitioner no.3, had kicked her, yet the said act was not with intention to cause miscarriage.

21. The aforesaid assertion of respondent no.2, on affidavit, at this juncture, does not leave any room to question the veracity of the factum of assault.

22. Section 312 of the Penal Code deals with the causing of miscarriage with the consent of the woman and prescribes punishments of varying term depending on the question as to whether the woman was quick with child. Section 313 of the Penal Code, on the other hand, deals with causing of miscarriage without the consent of the woman. It provides that whoever commits the offence defined in Section 312, without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 312, in turn, provides that whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with the prescribed sentence. In Section 312 the *mens rea* is denoted by using the term, “voluntarily”.

23. Section 39 of the Penal Code defines the term, “voluntarily” by providing that, a person is said to cause an effect “voluntarily”, when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. Intention is thus not indispensable to bring

about a certain consequence voluntarily. If a certain result is a probable consequences of the means employed by a person, he is said to have caused it voluntarily whether he really ment to cause it or not. The term “voluntarily” comprises within its fold intention, knowledge of, and belief as to, the consequences. The definition thus gives expression to the principle that a man is presumed to intend the probable consequences of his act.

24. On the touchstone of the aforesaid ingredients of the offence punishable under Section 313 of the Penal Code, particularly the element of *mens rea*, the assertion of respondent no.2 that though petitioner no.3 kicked her, there was no intention to cause miscarriage, does not take the act of the petitioner no.3 out of the dragnet of Section 313 of the Penal Code. The context cannot be lost sight. The respondent no.2 alleged that when she retorted that she would have met the unlawful demand, by earning on her own, but for the pregnancy she was carrying, petitioner no.3 got enraged and kicked on her stomach. Whether the act of the petitioner no.3 was accompanied with the mental element is a matter for trial. The act attributed to petitioner no.3, if proved to be with the requisite *mens rea*, may answer the description of the offence punishable under Section 313 of the Penal Code.

25. In the case of *Tulsi Devi and others vs. State of U.P.*⁷ the Gujarat High Court had an occasion to deal with a situation, like the case at hand, and upheld the conviction for the offence punishable under Section 313 of the Code.

26. The conspectus of the aforesaid consideration is that undoubtedly the marital discord is the genesis of the instant prosecution. It is also true that the parties have decided to bury the hatchet and resolve all the matrimonial disputes. Yet, in the backdrop of the nature of the accusation, especially against petitioner no.3, which is, in a sense, reinforced by filing an additional affidavit by respondent no.2, we are not persuaded to exercise inherent jurisdiction qua petitioner no.3 so far as the charge for the offence punishable under Section 313. However, we do not find any impediment in quashing prosecution qua petitioner nos.1 and 2, in respect of all the offences, and petitioner no.3 in respect of all the offences, except the offence punishable under Section 313 of the Penal Code. Hence, the following order:

: ORDER :

- (i) The petition stands partly allowed.
- (ii) Sessions Case No.831 of 2016 arising out of CR No.190 of 2015, pending on the file of Sessions

7 1996 Cri. L.J. 940.

Judge, Pune, stands quashed qua petitioner nos.1 Ajaysing Chauhan and 2 Mrs. Savita alias Savitridevi Chauhan, for all the offences, and petitioner no.3 Krushnapalsing Chauhan, for all the offences, except the offence punishable under Section 313 of the Penal Code.

- (iii) Case to proceed against petitioner no.3 Krushnapalsing Chauhan for the offence punishable under Section 313 of the Penal Code.
- (iv) The learned Sessions Judge is requested to make an endeavour to decide the Sessions Case as expeditiously as possible and preferably within a period of eight months from the date of communication of this order.
- (v) It is clarified that the observations hereinabove have been made for the limited purpose of determining the justifiability of the prayer for quashing the prosecution and they shall not be construed as an expression of opinion on the merits of the matter and the learned Sessions Judge shall decide the Sessions Case, in accordance with law, uninfluenced by these observations.

27. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]