

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO. 14 OF 2022

1. MOHAMMAD NUMAN AREFULLA KHAN
2. LUKMAN KHAN S/O AREFULLA KHAN
3. AREFULLA KHAN S/O GAUSKHAN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Londhe Bharat G.

APP for Respondent-State : Mr. S. J. Salgare

Advocate for Respondent No.2 : Mr. V. A. Bagal

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CORAM : V. K. JADHAV AND

SANDIPKUMAR. C. MORE, JJ.

DATED : 27th JANUARY, 2022

PER COURT:-

1. The applicants-accused are seeking quashing of the FIR bearing No. 276/2021 registered with Vedantnagar Police Station, Taluka and District Aurangabad for the offence punishable under Sections 504, 34 of IPC and under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019, on the ground that the parties have arrived at an amicable settlement.

2. Learned counsel for the applicants and learned counsel appearing for respondent no.2 submit that the parties have arrived at the settlement in terms of the compromise between them. The

compromise had taken place due to intervention of members of both the families. Applicant no.1 is now ready to cohabit with respondent no.2-informant. Respondent no.2-informant is also ready to stay with applicant no.1-husband. Learned counsel for the applicants and learned counsel for respondent no.2 submit that at present respondent no.2-informant is carrying pregnancy and the parties thus have arrived at amicable settlement. Learned counsel submits that the parties are also present in the Court hall.

3. We have also heard learned APP for the respondent-State.

4. We have carefully gone through the affidavit-in-reply filed by respondent no.2. The parties belong to Muslim community and their marriage took place on 25.12.2016. They have amicably settled their dispute and now agreed to reside together with love and affection. Thus, respondent no.2 is not intending to proceed with the FIR and prays for quashing of the same against all the applicants. We have also interacted with the parties and they have also told us that the matter is amicably settled between them and now respondent no.2 is carrying pregnancy. They are residing together as husband and wife and there is no dispute at present.

5. 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, 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. Para 21 of the said case of **Kulwinder Singh** is reproduced by the Supreme Court in para 48 of the judgment in **Gian Singh**. Clause 21(a) which is relevant for the present discussion reads as under :

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

The Supreme Court in paragraph no.61 of the judgment in **Gian Singh** (supra) has made 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 predominatingly 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.”

6. After going through the affidavit and after interacting with the parties, we are of the opinion that the parties have arrived at amicable settlement voluntarily. In view of the same and in terms of the ratio laid down by the Supreme Court in the above cited case, the Criminal Application is allowed in terms of prayer clause (B). The Criminal Application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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