

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 CRIMINAL APPLICATION NO. 19 OF 2022

TUKARAM RAOSAHEB KALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Bora Satyajit S.
APP for Respondent-State : Mr. S. S. Dande

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 27th JANUARY, 2022

PER COURT:-

1. The applicant nos. 1 to 5-original accused and applicant no.6-informant have jointly filed this application for quashing of the FIR bearing C.R. No. 917/2020 registered with Newasa Police Station, Taluka Newasa, District Ahmednagar for the offence punishable under Sections 498A, 323, 504, 506 of IPC on the ground that the parties have arrived at amicable settlement and they have also submitted the compromise terms in the divorce petition preferred by applicant no.1-husband before the Family Court at Pune.

2. Learned counsel for the applicants submits that applicant no.6 and applicant no.1 had performed marriage on 19.04.2017 and they have voluntarily decided to reside separately by obtaining a decree of divorce by mutual consent. Learned counsel submits that applicant

no.1 Tukaram has filed Petition-A No. 250 of 2020 before the Family Court, Pune for a decree of divorce and in the said petition, applicant no.1 and applicant no.6 have filed the compromise terms. It has been agreed between the parties that they will seek a decree of divorce by mutual consent in terms of the provisions of Section 13B of the Hindu Marriage Act and accordingly an application will be submitted in Petition-A No. 250 of 2020 for conversion. It is also agreed between them that applicant no.1-husband will pay an amount of Rs. 2,00,000/- (Rupees Two Lakh only) to applicant no.6-wife towards her permanent alimony. The said amount is already deposited before the Family Court, Pune through D.D. It is further agreed between the parties that applicant no.6 will withdraw all the criminal proceedings, including the complaint which is the subject matter of this criminal application. Learned counsel has pointed out the copy of said compromise terms annexed to this application marked at Exhibit "B" (page 18 of the application).

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

4. We have carefully gone through the compromise terms Exhibit "B". it appears to us that the parties have arrived at settlement voluntarily and now they have agreed to stay separately by obtaining

decree of divorce by mutual consent. Care has also been taken to pay certain amount to applicant no.6-wife as lump sum amount towards one time maintenance.

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. In view of the above and in terms of the ratio laid down by the Supreme Court in the above cited case, we proceed to pass the following order:

ORDER

- I. Criminal Application is hereby allowed in terms of prayer clause (B).
- II. The Criminal Application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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