

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

91 CRIMINAL APPLICATION NO.149 OF 2022

**SACHIN CHANGDEV MULE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. Kawade Shrikant G.
APP for Respondent no.1-State: Ms. P. V. Diggikar
Advocate for Respondent no.2 : Mr. R. T. Deshmukh

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

DATED : 28th MARCH, 2022.

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P. C. :

1. Heard finally with consent of the parties at admission stage.
2. The applicant-husband is seeking quashing of the proceeding bearing RCC No.114 pf 2021, pending before Judicial Magistrate First Class, Ambajogai pursuant to the Crime No. 512 of 2020, registered with Ambajogai City Police Station, for the offence punishable under Sections 498A, 323, 504 and 506 read with 34 of IPC on the ground that the parties have arrived at amicable settlement.
3. Learned counsel for the applicant and learned counsel for respondent no.2 submit that the applicant and respondent no.2

has amicably settled the matter and decided to live separately by dissolving their marriage by obtaining decree by mutual consent from competent court. Further, it is also agreed between the parties that the applicant shall pay Rs.3,00,000/- (Rs. three lakhs) towards permanent alimony along with 10 Tola and 5 gram gold and household articles gifted to her at the time of marriage. Learned counsel for respondent no.2 submits that respondent no.2 has filed an affidavit in reply to that effect and the said amount towards permanent alimony along with gold and household articles agreed to be given to respondent no.2 after the decree of divorce by mutual consent is passed by the Civil Court in the pending matter bearing HMP No.179 of 2021 pending before Civil Judge (Senior Division), Ambajogai District Beed.

4. We have also heard the learned APP for respondent no.1-State.

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, 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.”

6. 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.”

7. It appears that parties have arrived at amicable settlement voluntarily. Respondent no.2 has also filed an affidavit in reply and admitted that they have decided to live separately by obtaining the decree of divorce by mutual consent. The copy of the application bearing HMP No.179 of 2021 is also placed before us. It appears that the parties have already approached the Civil Court for obtaining decree of divorce.

8. It further appears that this court by order dated 16/12/2021 in Criminal Application No. 14 of 2021 has quashed the FIR and proceeding in terms of the settlement between the parties.

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

O R D E R

The criminal application is allowed in terms of
prayer clause "B" and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-