

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRIMINAL WRIT PETITION NO. 61 OF 2022

UMESH S/O DEVIDAS KALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Petitioners : Mr. Doke Kishor R.
APP for Respondent No.1-State : Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Mr. Estling S. Murge

.....

CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 21st FEBRUARY, 2022

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioners-original accused are seeking quashing of the proceedings bearing R.C.C. No. 105 of 2019 pending before the Judicial Magistrate, First Class, Court No.1, Georai for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC on the ground that the parties have arrived at an amicable settlement.
3. Learned counsel for the petitioners and the learned counsel for respondent no.2 submit that the parties have arrived at an amicable settlement. Petitioner no.1-husband and respondent no.2-wife have

decided to reside separately and do not want to continue with the relations. They have already filed proceedings bearing H.M.P. No. 116/2021 for divorce by mutual consent and the said petition is pending before the Civil Judge, Senior Division, Beed. They both are intending to marry different persons of their choice. It is further agreed and the same is also mentioned in the pending H.M.P. seeking a decree of divorce by mutual consent that petitioner no.1-husband shall pay an amount of Rs.2,00,000/- to respondent no.2 towards her alimony and also agreed to return her *stree dhan*. It is further agreed between the parties that petitioner no.1-husband will get the custody of the children and he will take care of both of his children. Learned counsel for respondent no.2 submits that respondent no.2 has filed an affidavit-in-reply to that effect. Respondent no.2 is now not willing to prosecute the FIR and the criminal proceedings arising out of the said FIR.

4. We have also heard learned APP for the respondent State.

5. We have carefully gone through the contents of the complaint, the affidavit-in-reply filed on behalf of respondent no.2 and also the copy of H.M.P. No. 116/2021 pending before the C.J.S.D., Beed for divorce by mutual consent. It appears that the parties have arrived at

amicable settlement and they have decided to end their marital relations permanently.

6. 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 referred the view taken by the five-Judge Bench of the Punjab and Haryana High Court in *Kulwinder Singh v. State of Punjab (2007) 4 CTC 769* and particularly quoted para 21 and referred the guidelines framed by the five-Judge Bench for quashing of the proceedings on the basis of settlement. Guideline under 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 of 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.”

7. In the instant case, we are satisfied that the parties have arrived at amicable settlement voluntarily. They have taken care to grant certain amount to respondent no.2-wife and also agreed to return her *stree dhan*. Furthermore, petitioner no.1-husband took the custody of the children and he will bear the expenses of their education, marriage etc. as agreed between the parties.

8. 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. The Criminal Writ Petition is hereby allowed in terms of prayer clause "C".

II. The Criminal Writ Petition is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)