

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

41 CRIMINAL APPLICATION NO.3902 OF 2019
WITH APPLN/2173/2021 WITH APPLN/348/2020

SACHIN S/O. SUBHASH PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. N. S. Ghanekar and
Mr. S. A. Gaikwad h/f Mr. V. B. Jogdand Patil
APP for Respondent no.1-State: Mr. S. J. Salgare
Advocate for Respondent no.2 : Mr. Kshitij Surve

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CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

DATED : 17th JANUARY, 2022.

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P. C. :

1. Heard finally with consent at admission stage.

2. The applicants / accused in these three criminal applications are seeking quashing of the FIR bearing No. 381 of 2019, registered with Mukundwadi Police Station, Aurangabad for the offence punishable under Sections 498A, 420, 406, 504, 506 read with 34 of IPC and Section 3 and 4 of the Dowry Act and Section 67 of the Information Technology Act and also seeking quashing of the proceedings vide RCC No.207 of 2021,

pending before Judicial Magistrate (First Class), Aurangabad, on the ground that the parties have arrived at amicable settlement before the mediator appointed by this court and referred the matter to the mediator for mediation.

3. Learned counsel for the applicants submits that all the accused persons in connection with Crime No. 381 of 2019 are before the court by filing three separate applications. As per the settlement arrived at between the parties before the mediator, it is agreed that the applicant Sushant Dilip Kadam in Criminal Application No. 2173 of 2021 will pay Rs.28,00,000/- (Rs. Twenty eight lakhs) in two installments to respondent no.2 wife namely Snehal. Further applicant no.1 in Criminal Application No. 2173 of 2021 and respondent no.2 informant has obtained divorce by mutual consent before Family Court, Aurangabad by way of filing petition No.F-232 of 2021. It is further submitted that out of the said amount of Rs.28,00,000/- (Rs. Twenty eight lakhs), 50% of the amount i.e. Rs.14,00,000/- (Rs. Fourteen lakhs) came to be deposited before this court and out of that amount respondent no.2

informant was permitted to withdraw an amount of Rs.5,00,000/- (Rs.Five lakhs) under the orders of this court. So far as remaining amount of Rs.9,00,000/- (Rs.Nine lakhs) deposited before this court is concerned, applicant no.1 husband in Criminal Application no. 2173 of 2021 has no objection if the said amount is paid to respondent no.2 informant. It is further submitted that the balance amount of Rs.14,00,000/- (Rs. Fourteen lakhs) is already deposited before the Family Court and now the applicant no.1 husband in Petition No.F-232 of 2021 has no objection if the said amount is paid to respondent no.2 informant.

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

5. We have carefully gone through the contents of the settlement deed, which bears signatures of both the parties and also the mediator. It, thus, appears that the parties have amicably settled the dispute and the care has also been taken to grant substantial amount to respondent no.2 as a permanent alimony and other expenses. There is no issue.

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 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.”

7. 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.”

8. In view of above and after going through contents of the settlement, we are satisfied that the parties have arrived at amicable settlement voluntarily. The parties, particularly respondent no.2 is entitled for withdrawal of the amount in terms of the settlement and as agreed by their respective counsel before this Court.

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

ORDER

- I) Criminal Application No.3902 of 2019 is hereby allowed in terms of amended prayer clause "B", Criminal Application No.2173 of 2021 is hereby allowed in terms of prayer clause "B" and Criminal Application No.348 of 2020 is hereby allowed in terms of amended prayer clause "B".

II) So far as the amount of Rs.9,00,000/- (Rs. Nine lakhs) lying before this court is concerned, respondent no.2 is permitted to withdraw the same in her middle name.

III) Criminal applications are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-