

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL APPLICATION NO. 278 OF 2021

CHETAN S/O NIMBA CHAVAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. C. V. Bodkhe h/f Mr. R. V. Gore

APP for Respondent No.1-State : Mr. S. D. Ghayal

Advocate for Respondent No.2 : Mr. Anup D. Mane h/f
Mr. Nilesh N. Desale

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 08th APRIL, 2022

PER COURT:-

1. Heard finally with consent at admission stage.
2. The applicants are seeking quashing of the FIR bearing crime no. 03/2021 registered with Devpur Police Station, Taluka and District Dhule for the offence punishable under Sections 420, 498-A, 504 r.w. 34 of IPC and also seeing quashing of the proceedings vide R.C.C. No. 172 of 2021 pending before the JMFC, Dhule, on the ground that the parties have arrived at an amicable settlement.
3. Learned counsel for the applicants and learned counsel for respondent no.2 submit that due to intervention of the family

members from both sides, the parties have arrived at an amicable settlement. Applicant no.1-husband and respondent no.2-wife have filed a joint petition bearing Petition No. 64/2021 for a decree of divorce on mutual consent in terms of the provisions of Section 13B of the Hindu Marriage Act, 1955 and the learned Judge of the Family Court, Dhule, by judgment and order dated 26.07.2021, has already passed a decree of divorce on mutual consent in terms of Section 13B of the Hindu Marriage Act, 1955. Learned counsel submit that applicant no.1-husband has agreed to pay an amount of Rs.3,85,000/- to respondent no.2 towards her permanent alimony. Learned counsel for respondent no.2, on instructions, submits that the said amount has already been paid to respondent no.2.

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

5. It appears that due to intervention of the family members from both sides, the parties have arrived at the amicable settlement and in terms of the said settlement, applicant no.1 and respondent no.2 have also filed a joint petition bearing Petition No. 64 of 2021 for a decree of divorce on mutual consent in terms of the provisions of Section 13B of the Hindu Marriage Act, 1955 before the learned Judge, Family Court, Dhule. Even the learned Judge of the Family Court, Dhule, by

judgment and order dated 26.07.2021, has passed a decree of divorce as mentioned above. Further, care has also been taken to pay certain amount to respondent no.2 towards her permanent alimony.

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 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.

7. In the instant case, we are satisfied that the parties have arrived at the amicable settlement voluntarily. They have amicably settled the matter due to intervention of the family members from both sides and also obtained a decree of divorce. Furthermore, certain amount has also been given to respondent no.2 towards her permanent alimony.

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. Criminal application is allowed in terms of prayer clauses [B] and [B-A].

II. Criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)