

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

68 CRIMINAL WRIT PETITION NO. 190 OF 2020

DNYENSHWAR S/O. SAYAJI TAKALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Shermale K. N.
APP for Respondent No.1-State : Mr. R. V. Dasalkar
Advocate for Respondent No.2 : Mr. Sayyed Umair Pasha A. Quader

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 28th FEBRUARY, 2022**

PER COURT:-

1. Leave to correct the prayer clause to the extent of the Sessions Case number.
2. Heard finally with consent at admission stage.
3. On the basis of the complaint lodged by respondent no.2, crime no. 645/2019 came to be registered with Sangamner City Police Station, District Ahmednagar against the present petitioner for the offence punishable under Sections 376 (1), 313, 323 of IPC. It has been alleged in the complaint that there was a love affair between the petitioner and respondent no.2 and by giving false promise of marriage, the petitioner has performed sexual intercourse with

respondent no.2 against her will. It has also been alleged in the complaint that due to the said act, respondent no.2 has conceived. However, the petitioner gave certain tablets to her for termination of pregnancy and accordingly, her pregnancy was terminated.

4. Learned counsel for the petitioner and learned counsel for respondent no.2 submit that the parties have arrived at an amicable settlement and they are seeking quashing of the FIR as well as the proceedings on the basis of settlement. Respondent no.2 has also filed her affidavit-in-reply. Learned counsel for respondent no.2 submits that due to intervention of the family members from both sides, the dispute came to be resolved amicably. Hence respondent no.2 has no grievance against the petitioner and she is not interested to give evidence against the petitioner in the case. Learned counsel submit that respondent no.2 was in love with the petitioner since her college life and all the acts as alleged in the FIR have been done with consent. It is further explained in the affidavit-in-reply that filing of the complaint is the outcome of the heat of anger and sheer depression. Learned counsel for the petitioner and learned counsel for respondent no.2 submit that respondent no.2 has performed marriage with another person and she is happily cohabiting with him. The petitioner has also performed marriage with other woman and he is

also happily cohabiting with her. Learned counsel for the petitioner submits that even though the crime is of the year 2019 and the charge-sheet has been submitted, till this date the trial is not commenced.

5. We have also heard learned APP for the respondent-State. Learned APP submits that there are no antecedents.

6. We have carefully gone through the contents of the complaint so also perused the charge-sheet. It appears that there were consensual relations between the petitioner and respondent no.2. Even at the time of the alleged commission of crime, respondent no.2 was major and when she lodged the complaint, she was 21 years of age. Admittedly, there was a love affair between the petitioner and respondent no.2. Even though there are certain allegations about termination of pregnancy, however, both the counsel have pointed out to us that there is no evidence about the same. It further appears from the affidavit filed by respondent no.2 that due to intervention of the family members from both the sides, the parties have arrived at an amicable settlement. It further appears that they have performed marriage with different partners and there is no grievance against each other at present.

7. In the case of *Gian Singh vs. State of Punjab and others*, reported in **(2012) 10 SCC 303**, the Supreme Court in para 48 of the judgment has referred the view expressed by the five-Judge Bench of the Punjab and Haryana High Court in **Kulwinder Singh v. State of Punjab (2007) 4 CTC 769** and also reproduced the guidelines framed by the five-Judge Bench in para 21. So far as the guideline 21(e) is concerned, the same is relevant to consider quashing of the proceedings on the ground of settlement between the parties when the offence is allegedly against human body. Clause 21(e) of the said guidelines framed by the five-Judge Bench is reproduced hereinbelow :

“21. (e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge

of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.”

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.

8. Though the offence of rape is included in the category of heinous crimes wherein quashing is not permissible in terms of clause 21(e) of the said guidelines, however, so far as rape crime is concerned, it has been clarified as "a case involving clear-cut allegations of rape". In the instant case, we do not find clear-cut allegations of rape. On the other hand, it appears that there was a love affair and in consequence thereof, there were consensual relations between the petitioner and respondent no.2 for a long period. In view of the same and in terms of the ratio laid down by the Supreme Court in the aforesaid case, we are inclined to quash the

proceedings on the ground of settlement. The parties have performed marriage with the partners of their choice. There are very rare and bleak chances of conviction since the prosecutrix is no more interested to prosecute her case. Hence, the following order:

ORDER

- I. The Criminal Writ Petition is hereby allowed in terms of prayer clauses "B" and "B-1".

- II. The Criminal Writ Petition is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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