

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

967 CRIMINAL WRIT PETITION NO.173 OF 2021

NIRANJAN RAJIV MAHAJAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Mahesh Taur, Advocate for the petitioners.
Mr. M.M. Nerlikar, A.P.P. for respondent No.1
Advocate R.R. Tandale, holding for
Mr. S.S. Thombre, Advocate for respondent No. 2.

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

DATE : 19-01-2022.

ORDER :

1. Leave to correct the number of Regular Criminal Case in prayer clause C-1.
2. Heard finally with the consent of parties at the admission stage.
3. The petitioners / original accused are seeking quashing of F.I.R. bearing Crime No. 227/2020 registered with Osmanpura Police Station for the offences punishable under Sections 498-A, 354, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the

Dowry Prohibition Act. The petitioners are also seeking quashing of the proceedings vide R.C.C No. 1376/2021 pending before the learned Judicial Magistrate, First Class, Aurangabad, on the ground that the parties have arrived at amicable settlement.

4. Learned Counsel for the petitioners and learned Counsel for respondent No. 2 / informant submits that the parties have arrived at amicable settlement and compromise terms are also worked out. They have arrived at settlement due to intervention of the close relatives. Thus, the petitioner No.1 husband and respondent No. 2 informant have also filed petition bearing No. 285/2021 before the Family Court, Aurangabad under Section 13 (B) of the Hindu Marriage Act for decree of divorce on mutual consent. In the said petition they have filed compromise terms. It has agreed by them that respondent No. 2 informant will withdraw all the proceedings filed by her in various Courts. Learned Counsel submits that the Family Court has now passed decree of divorce on mutual consent. Learned Counsel for respondent No. 2 submits that the compromise purshis signed by petitioner No. 1 and respondent No. 2 informant is placed on record.

5. We have also heard learned A.P.P. for respondent No.1 – State.

6. We have carefully gone through the compromise purshis. It appears that the parties have already approached the Family Court and also obtained decree of divorce on mutual consent. They have worked out the compromise terms before the Family Court. It further appears that they have settled the dispute amicably due to intervention of the close relatives. Learned Counsel for the petitioners submits that certain amount has been paid to respondent No. 2 informant towards permanent alimony in terms of the compromise.

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 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.”

8. 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.”

9. In view of the terms of compromise purshis and since the parties have already obtained decree for divorce by mutual consent, we are satisfied that the parties have settled their dispute and care has also been taken to pay certain amount to respondent No. 2 informant towards permanent alimony.

10. In view of the above and in terms of the ratio laid down by the Supreme Court in the case of Gian Singh (supra), we proceed to pass the following order.

ORDER

- (i) Criminal Writ Petition is hereby allowed in terms of prayer clause “C” and “C-1”.
- (ii) Criminal Writ Petition is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)**(V.K. JADHAV, J.)***VD_Dhirde*