

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

921 CRIMINAL APPLICATION NO.781 OF 2022

1. Mohammed Waseem Shaikh Hanif
 2. Najma Begum w/o Shaikh Hanif
 3. Shaikh Habib s/o Sk. Hanif
 4. Mohsina Begum w/o Sk. Habib
 5. Shaikh Mohsin s/o Sk. Hanif
 6. Asma w/o Shaikh Kadir
 7. Rashma w/o Naim Khan
- Applicants

versus

1. The State of Maharashtra
 2. Shahana Begum w/o Sk. Wasim
- Respondents

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Mr. Vishal Bagdiya, Advocate for the applicants.
Mr. S.S. Dande, A.P.P. for respondent No. 1- State.
Mr. R.N. Chavan, Advocate for respondent No. 2.

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

DATED : 26th April 2022.

P.C. :

1. Heard finally with consent at the admission stage.
2. The applicants / original accused are seeking quashing of F.I.R. bearing Crime No. 393 of 2020 registered with Jinsi Police Station, Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 read with

Section 34 of the Indian Penal Code and consequential criminal proceedings bearing R.C.C. No. 1829 of 2020 pending before the Judicial Magistrate (First Class), Aurangabad, on the ground that the parties have arrived at amicable settlement.

3. Learned Counsel for the applicants and learned Counsel appearing for respondent No. 2 submit that applicant No.1 husband and respondent No.2 wife have settled the dispute amicably and also given khula/divorce on 18.12.2021. In terms of the Khulanama dated 18.12.2021, the Family Court has disposed of the maintenance proceedings initiated by respondent No.2 and also the petition filed by applicant No.1 for restitution of conjugal rights. Learned Counsel for respondent No.2 submits that consent affidavit is filed to that effect and the translated copy of khulanama is also placed on record. Learned Counsel appearing for the parties submit that it is agreed between the parties that applicant No.1 husband will pay an amount of Rs.3,11,000/- towards one time maintenance and the said amount has already been paid and received by respondent No.2 wife.

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

5. It appears that the parties have arrived at amicable settlement voluntarily. In terms of settlement even the Principal Judge of the Family Court, Aurangabad by order dated 17.12.2021 on the basis of the purshis (exh.13) filed by the parties, disposed of the maintenance proceedings bearing application No. E-76/2020. It further appears that on the basis of another withdrawal purshis (Exh.9) learned Principal Judge, Family Court, Aurangabad by order dated 17.12.2021 has disposed of the application filed by applicant No.1-husband under Section 281 of the Mohammedan Law for restitution of conjugal rights.

6. We have carefully gone through the contents of khulanama. It appears that respondent No. 2 – wife has given in writing the khulanama with her free will and consent that due to difference in the nature, it has become impossible to continue the relations and thus she has demanded khula from the husband with the terms and conditions as referred above. In view of the same, it appears that respondent No.2 is not interested in prosecuting the present case.

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 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 hereby allowed in terms of prayer clause [B].
- (ii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)