

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

965 CRIMINAL APPLICATION NO.620 OF 2021

SHAIKH FAIZAN SHAIKH MOHAMMAD ZAHID AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Sayyed Tauseef Yaseen

APP for Respondent no.1-State: Mr. K. S. Patil

Advocate for Respondent no.2 : Mr. A. V. Lavte

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

DATED : 17th MARCH, 2022.

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P. C. :

1. Heard finally with consent of the parties at admission stage.
2. The applicants are seeking quashing of the proceeding bearing RCC No. 78 of 2021 pending before the learned Judicial Magistrate (First Class), Majalgaon for the offence punishable under Sections 498-A, 323, 504 and 506 read with 34 of IPC in pursuance to the filing of the charge sheet in connection with Crime No. 342 of 2020 on the ground that the parties have arrived at amicable settlement.
3. Learned counsel for the applicants and the learned counsel for respondent no.2 submit that after registration of the crime due

to intervention of relatives and respectable persons, the dispute has been amicably settled between the parties. Applicant no.1 husband and respondent no.2 have decided to reside separately by executing "Khulanana" dated 30/12/2021. The copy of the "Khulanama" is annexed and marked as Exhibit-R-1. It is stated in the "Khulanama" that since respondent no.2 was not having good terms with her husband-applicantno.1, she started residing with her parents. The applicant no.1-husband has accepted in the "Khulanama" executed by respondent no.2. It has been stated in the "Kabulnama" that marital relations between applicant no.1 and respondent no.2 comes to an end and they are free to live to their lives separately. Learned counsel submit that in view of the "Khulanama" and "Kabulnama" respondent no.2 does not want to continue the prosecution. The applicant no.2 is the father-in-law, applicant no.3 is the mother-in-law, applicant nos.4 and 5 are the brother-in-laws of the respondent no.2 and applicant no.6 is the sister-in-law. In view of the said "Khulanama" and "Kabulnama", matrimonial relations between applicant no.1 and respondent no.2 have come to an end. Learned counsel for respondent no.2 submits that respondent no.2 has filed an affidavit to that effect along with copies of "Khulanama" and "Kabulnama".

4. We have also heard the learned APP for the respondent no.1-State.

5. We have carefully gone through the affidavit in reply of respondent no.2 and also the copies of the "Khulanama" and "Kabulnama". It appears that due to intervention of the relatives and respectable persons, parties have arrived at amicable settlement and they have also executed Khulanama and Kabuliyatnama. It further appears that respondent no.2 has given up her claim about maintenance.

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. We are of the opinion that the parties have arrived at amicable settlement voluntarily. They have executed amongst them "Khulanama" and "Kabulnama". It further appears that the parties have arrived at amicable settlement due to intervention of the relatives and respectable persons of the society. In view of above, and in terms of the ratio laid down by the Supreme Court in above cited case, we proceed to pass following order.

ORDER

Application is allowed in terms of prayer
clause "A" and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-