

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

74 CRIMINAL APPLICATION NO.852 OF 2020

MADAN HARI GAVRE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

.....
Advocate for Applicants : Mr. Anjanwatikar Vinay B
APP for Respondent No.1-State: Mr. S.S. Dande
Advocate for Respondent No.2 : Mr. Abhijit B. Choudhari
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR, C. MORE, JJ.
DATED : 24th JANUARY, 2022**

PER COURT:-

1. The applicants original accused are seeking quashing of proceeding bearing R.C.C. No. 126 of 2017 pursuant to the crime No. 66 of 2016 for the offences punishable under Section 498-A, 323, 377, 354-A(3), 354-B, 354-K, 504, 506 r.w. 34 of I.P.C. on the ground that the parties have arrived at amicable settlement.

2. Learned counsel for the applicants and learned counsel appearing for respondent No.2 submit that due to intervention of District Mediation Canter, Aurangabad, the dispute between the parties came to be settled amicably on the basis of the compromise terms tendered before the learned Civil Judge, Senior Division, in HMP No. 389 of 2018. Accordingly, decree of divorce under Section 13-B of Hindu Marriage Act, 1955 also came to be passed. The said compromise terms are also placed before this Court alongwith the

decree of mutual divorce passed by the 4th Civil Judge, Senior Division, Aurangabad.

3. We have also heard learned A.P.P. for the respondent State.

4. We have carefully gone through the affidavit of respondent No.2 filed to that effect and also gone through the compromise terms filed before the learned Civil Judge, Senior Division, Aurangabad in HMP seeking divorce by mutual consent. It appears that care has also been taken to grant certain amount to respondent No.2 informant towards permanent alimony.

5. 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**. A five-Judge Bench of the Punjab and Haryana High Court, in para 21 of the judgment, by placing reliance on the various judgments of the Supreme court, has framed the guidelines for quashing of the criminal proceeding on the ground of settlement. Para 21 of the said case of ***Kulwinder Singh's judgment*** 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.”

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.

6. It appears that the parties have arrived at amicable settlement before the mediator of mediation center and also placed those compromise terms in the Hindu Marriage Petition before the C.J.S.D. Aurangabad. On the basis of said settlement the learned Civil Judge, Senior Division, passed decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act. Thus, considering entire aspect, it appears to us that the parties have arrived at amicable settlement voluntarily. Respondent No.2 informant is not

willing to proceed with the criminal proceeding which is subject matter of this criminal application.

7. In view of above and in terms of the ratio laid down by the Supreme court in the above cited case, criminal application is allowed in terms of prayer clause "B".

8. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

rlj/