

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

934 CRIMINAL APPLICATION NO.3118 OF 2021
WITH
CRIMINAL APPLICATION NO. 3105 OF 2021
WITH
CRIMINAL APPLICATION NO. 799/2021

SURAJ KHUSHALSINGH RAJPUT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. M.L. Muthal
APP for Respondent/State : Mr. R.V. Dasalkar
Advocate for respondent No. 2 : Ms. Aummaheshwari Jadhav

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**CORAM : V.K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**
DATED : 18/01/2022

PER COURT :

. Criminal Application No.3118/2021 is filed for restoration of Criminal Application No.799/2021. The other side has no objection for it. In view of the same and for the reasons stated in the application, the application is allowed in terms of prayer clause 'B', subject to cost of Rs.500/- to be paid to the High Court Bar Library, High Court of Bombay, Bench at Aurangabad. Criminal Application is accordingly disposed of.

2. Heard. During the pendency of the main Criminal

Application No. 799/2021, chargesheet has been submitted. Criminal Application No. 3105/2021 is preferred for amendment to seek quashing of the proceedings. In view of the same and for the reasons stated in the application, Criminal Application No. 3105/2021 is allowed in terms of prayer clause 'B'. Criminal Application is accordingly disposed of.

3. In main Criminal Application No. 799/2021, the learned counsel for the applicants submits that the parties have arrived at amicable settlement. The counsel appearing for respondent No. 2 has also not disputed the same. The learned counsel for respondent No. 2 submit across the bar affidavit in reply. The same is taken on record. Copy is given to other side.

4. The applicants/accused are seeking quashing of the F.I.R. bearing Crime No. 72/2021 registered at Partur Police Station, District Jalna for the offences under sections 498-A, 323, 504, 506 r/w. 34 of I.P.C. and under section 3 and 4 of Dowry Prohibition Act, 1860 and the applicants are also seeking quashing of the proceedings bearing RCC No. 138/2021 pending before the Judicial Magistrate, First Class, Partur on the ground that the parties have arrived at amicable

settlement.

5. The learned counsel for the applicants and the learned counsel appearing for respondent No. 2 submit that the applicant No. 1/husband and respondent No. 2/wife have settled their dispute amicably out of the Court and in the presence of the respectable persons of the society. They have agreed to obtain divorce by mutual consent and for that purpose, the divorce petition filed by applicant No. 1 husband bearing petition No. A-408/2020 pending before the Family Court Aurangabad is now going to be converted in to divorce petition by mutual consent under section 13-B of the Hindu Marriage Act. Further, it is also agreed between the parties that the applicant No. 1/husband will pay Rs.25,000/- to the wife as permanent alimony and further, gold jewellery of fifteen tola has been also given to respondent No. 2 in lieu of her future maintenance. It is also agreed between parties that they will not have right, interest, share in the property of each other in future. They have decided to withdraw all the criminal proceedings filed against each other.

6. We have also heard the learned APP for respondent No. 1/State.

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**. 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 of 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. In the instant case, applicant No. 1 and respondent No. 2 have filed joint pursis for amicable settlement. The other applicants have put their signatures on it. As per the joint pursis, it is stated that the applicant No. 1 and respondent No. 2 cannot live together and they have decided to end up with their marital ties permanently. We are satisfied that the parties have arrived at amicable settlement voluntarily.

9. In view of the above and in terms of the ratio of the Supreme Court in the above cited case, we proceed to pass the following order.

ORDER

- I) Criminal Application No. 799/2021 is hereby allowed in terms of prayer clause 'B' and 'B-1'.
- II) Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]

[V.K. JADHAV, J.]

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