

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

968 CRIMINAL WRIT PETITION NO.549 OF 2021

KHWAJA TAHSEEN HASIN AHMED AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Petitioners : Mr. S.S. Kazi
APP for Respondent-State: Mr. K.S. Patil
Advocate for Respondent No.2 : Mr. Shaikh Mohammad Naseer A.
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 27th APRIL, 2022**

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The petitioners-original accused are seeking quashing of F.I.R. bearing No. 507 of 2019 registered with Bazar Police Station, Bhusawal, for the offences punishable under Sections 498A, 406, 323, 504, 506 r.w. 34 of I.P.C. and also consequential criminal proceeding bearing R.C.C. No. 37 of 2020 pending before the J.M.F.C. Bhusawal on the ground that the parties have arrived at amicable settlement.
3. Learned counsel for the petitioners and respondent No.2 submit that due to intervention of relatives, well wishers and friends, petitioner No.1 Khwaja Tahseen Hasin Ahmed (husband of respondent No.2) and respondent No.2 have mutually agreed to

dissolve their marriage. They have decided to reside separate permanently. Thus, they have decided to withdraw the proceedings pending against each other, including the petition for restitution of conjugal rights filed by petitioner No.1 Khwaja Tahseen Hasin Ahmed in the Family Court, Bandra bearing No. A-2235 of 2019. They have also decided to take divorce i.e KHULA. Respondent No.2 has received an amount of Rs.51,000/- (Rupees fifty one thousand) as Meher. Learned counsel for respondent No.2 submits that respondent No.2 has filed consent affidavit to that effect and they have placed copies of Khulanama before the court.

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

5. We have carefully gone through the contents of complaint, consent affidavit and the contents of Khulanama. It appears that the parties have settled their dispute amicably and voluntarily. Further the amount has also been paid to respondent No.2 towards Meher.

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 referred the view taken by the five-Judge Bench of the Punjab and Haryana High Court in ***Kulwinder Singh v. State of Punjab (2007) 4 CTC 769*** and particularly quoted para 21 and referred the guidelines framed by the five-Judge Bench for quashing of the proceedings on the basis of settlement. Guideline under 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. Thus, the Supreme Court in para No.61 of the judgment in the case of ***Gian Singh vs. State of Punjab and others (supra)*** 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; (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 pre-dominantly 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 view of the above and in terms of ratio laid down by the Supreme court in the above cited case, we proceed to pass the following order:-

ORDER

- I. Criminal writ petition is allowed in terms of prayer clauses "A" and "B-1".
- II. Criminal writ petition is disposed of accordingly.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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