

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPLICATION NO. 3735 OF 2019

SUNITA W/O. LATE VIJAY KOKULWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

AND

934 CRIMINAL APPLICATION NO. 1517 OF 2022

ROSHAN S/O VIJAY KOKULWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicants : Mr. Vasmatkar Amol G.
APP for Respondent-State : Mr. S. S. Dande
Advocate for Respondent No.2 : Mr. B.N. Gadegaonkar

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

PER COURT:-

1. Leave to add R.C.C. number and the name of the Court before which the case is now pending in prayer clause "B" of criminal application No. 3735 of 2019.
2. By consent of the parties, heard finally at admission stage.
3. The applicants accused persons in both the matters are seeking quashing of F.I.R. bearing crime No.238 of 2019 registered with Vimantal Police Station, Nanded for the offences punishable under sections 498-A, 323, 504, 506 r.w. 34 of I.P.C. and also

consequential criminal proceedings bearing R.C.C. No. 65 of 2020 pending before the Chief Judicial Magistrate, Nanded, on the ground that the parties have arrived at amicable settlement.

4. Learned counsel for the applicants and learned counsel appearing for respondent No.2 submit that though respondent No.2 has initially contested the matter by filing affidavit in reply, however, at present the parties have settled their dispute amicably. Learned counsel appearing for the parties submit that respondent No.2 has initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 bearing PWDAV No. 23 of 2020 and also filed present complaint bearing F.I.R. No. 238 of 2019 as referred to above. However, during pendency of various proceedings, the parties have realized that there is no possibility of reconciliation and because of intervention by the elderly persons and relatives, the parties have settled the dispute amicably. Learned counsel appearing of the parties submit that even the applicant Roshan in criminal application No. 1517 of 2022 (husband of respondent No.2) and respondent No.2 have filed a joint petition bearing HMP No. F-29 of 2022 for a decree of divorce by mutual consent in terms of the provisions of Section 13-B of the Hindu Marriage Act. Learned counsel submits that the applicant Roshan (husband of respondent No.2) has deposited an amount of Rs.3,00,000/- (Rupees Three Lakh) towards past and future maintenance before the Family Court in the pending matter and it is agreed between the parties that after

the decree of divorce is passed by the Family Court, respondent No.2 will be entitled to withdraw the said amount.

5. We have also heard the learned A.P.P. for the respondent No.1-State in both the matters.

6. It appears that due to intervention of elderly persons and the relatives, the parties have arrived at amicable settlement. Accordingly, the applicant Roshan (husband of respondent No.2) and respondent No.2 have approached the Family Court, Nanded by filing joint HMP No. F-29 of 2022 for a decree of divorce by mutual consent in terms of provisions of Section 13-B of the Hindu Marriage Act. Copy of the said petition is placed before us. Further, care has also been taken to pay certain amount towards future maintenance. In view of the same, we are satisfied that the parties have arrived at amicable settlement voluntarily.

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 referred the view taken by the five-Judge Bench of the Punjab and Haryana High Court in ***Kulwinder Singh Vs. 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.”

8. 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."

9. In view of 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 No. 3735 of 2019 is allowed in terms of prayer clauses "B".

- II. Criminal application No. 1517 of 2022 is allowed in terms of prayer clauses "B" and "C".
- III. Both the criminal applications are disposed of accordingly.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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