

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

CRIMINAL APPLICATION NO. 1574 OF 2022

01 Habib Sayyadbhai Sayyad,
age: 60 years, Occ: Retired;

02 Rabiya Habib Sayyad,
age: 55 years, Occ: Household;

03 Sahil s/o Habib Sayyad,
age: 30 years, Occ: Labour;

04 Nadeem s/o Habib Sayyad,
age: 28 years, Occ: Labour;

All R/o Karmaveer Nagar,
Indirapeth, Kopargaon,
Tq. Kopargaon, District Ahmednagar.

Applicants

Versus

01 The State of Maharashtra,
through Police Station Shirdi,
Tq. Rahata, Dist. Ahmednagar.

02 Saniya Sahil Sayyad,
age: 26 years, Occ: Household,
R/o Lalbi Manzil, Ganeshwadi,
Govindnagar, Shirdi, Tq. Rahata,
District Ahmednagar.

Respondents

Mr. M. S. Shaikh, advocate for the applicants

Mr. R. V. Dasalkar, APP for Respondent No.1-State.

Mr. A. G. Shaikh (Daruwala), advocate for Respondent No.2.

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

DATE : 02nd May, 2022.

PC :

1 By consent of learned Counsel for respective parties, heard finally at the stage of admission itself.

2 The applicants/accused are seeking quashing of the First Information Report bearing Crime No. 37 of 2021, registered with Shirdi Police Station, Tq. Rahata, District Ahmednagar, for the offences punishable under Sections 498-A, 323, 504, 506, 406 read with Section 34 of the Indian Penal Code and also consequential criminal proceedings bearing R.C.C. No.148 of 2021, pending before the learned Judicial Magistrate, First Class, Rahata, District Ahmednagar, on the ground that the parties have arrived at an amicable settlement.

3 Learned Counsel for the applicants and learned Counsel for Respondent No.2 submit that the parties have arrived at an amicable settlement voluntarily wherein the parties have decided to go for annulment of marriage on the ground of non consummating the marriage and have dissolved the marriage by executing customary divorce i.e. "Khulanama" on 21.04.2022. It has been agreed between the parties that an amount of Rs.2,00,000/- (Rs. Two lakhs) will be paid to Respondent No.2 by

the applicants towards one time settlement. Learned Counsel for Respondent No.2 submits that Respondent No.2 has filed consent affidavit and accepted that she has received an amount of Rs.Two lakhs. Learned Counsel for Respondent No.2 submits that she is not interested in prosecuting the crime.

4 We have also heard learned A. P. P. for Respondent-State.

5 We have gone through the contents of the complaint and compromise pursis i.e. "Khulanama". We are satisfied that the parties have arrived at an amicable settlement voluntarily and a care has also been taken by paying certain amount to Respondent No.2 by way of one time settlement.

6 In the case of *Gian Singh vs. State of Punjab and others*, reported in *(2012) 10 SCC 303*, the Hon'ble 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, by placing reliance on the judgments of the

Supreme court in the cases of *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551, *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699, *Simrikhia v. Dolley Mukherjee* (1990) 2 SCC 437, *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675 and *Ram Lal v. State of Jammu and Kashmir* (1999) 2 SCC 213, has framed the guidelines for quashing of the criminal proceeding on the ground of settlement. Clause (a) of the said guidelines is relevant which is reproduced herein below :

“21 (a) Cases arising from matrimonial discord, even if the other offences are introduced for aggravation of the case.”

7 The Hon'ble 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 discussion and in view of the ratio laid down in the afore-cited case, we proceed to pass the following order:

(i) Criminal Application is allowed in terms of prayer

clause "A".

9 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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