

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

CRIMINAL WRIT PETITION NO.810 OF 2021

ASHISH ASHOK NAIK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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WITH
CRIMINAL WP NO.1088 OF 2021

REKHA W/O HARSUKHLAL CHAUHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Sant Kishor C.
APP for Respondents: Mr. R V Dasalkar
Advocate for Respondent 2 : Mr. Bayas Anandsingh

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: April 06, 2022

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PER COURT :-

1. Heard finally with consent of parties at admission stage.

2. The petitioners/original accused are seeking quashing of the First Information Report bearing crime No.255 of 2021 registered with Pundlik Nagar Police Station, Aurangabad for the offence punishable under sections 498-A, 420, 406, 323, 504, 506, r/w 34 of the

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Indian Penal Code and under section 307 r/w 34 of the Indian Penal Code on the ground that the parties have arrived at amicable settlement.

3. Learned counsel for the petitioners in both the writ petitions and the learned counsel appearing for respondent no.2/informant in both the writ petitions submit that, the parties have worked out the consent terms and those terms are placed before the Court. The petitioner no.2 - Jay Harsukhlal Chauhan (husband of respondent no.2 - Prachi) in criminal writ petition no.1088 of 2021 and respondent no.2-Prachi Jay Chauhan have filed HMP No.F-308 of 2021 for a decree of divorce on mutual consent in terms of the provisions of Section 13-B of the Hindu Marriage Act, 1955 before the Family Court, Aurangabad and the said petition is pending. It is agreed between the parties that petitioner no.2-husband Jay Chauhan has to pay an amount of Rs.21.00 Lacs towards the permanent alimony of the respondent no.2. Further, as agreed between the parties, said amount has been deposited in

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the account of one Mr. Sunil Vishram Chawda, who is elderly and respected person from the community. It is further agreed between the parties that petitioner no.2 Jay (husband of respondent no.2) will arrange to give Demand Draft of the said amount in the name of respondent no.2 Prachi before the Family Court, Aurangabad. Parties thus agreed to withdraw all the proceedings initiated against each other. Learned counsel appearing for respondent no.2/informant submits that respondent no.2 Prachi is not willing to prosecute the present complaint and she gives her consent for quashing of the FIR No.255 of 2021 registered with Pundlik Nagar Police Station, Aurangabad.

4. We have heard the learned APP for respondent/ State. We have made a specific query with the learned APP as to whether any medical certificate is collected by the investigating officer since the charge under section 307 r/w 34 of the IPC is levelled. Learned APP, on instructions submits that, as per the allegations made

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by respondent no.2 in her supplementary statement, on 30.4.2021 she was forcibly administered sleeping pills 20-25 in numbers, however, she has immediately vomited the contents. Learned APP, on instructions from the investigating officer, submits that respondent no.2 Prachi was neither hospitalized for that purpose nor the investigating officer has collected any certificate because the same is not available.

5. It appears that due to intervention of the elderly and respected members from their community, parties have arrived at settlement and they have agreed to get separated permanently. Petitioner no.2 Jay Chauhan in Criminal Writ Petition no.1088 of 2021 and respondent no.2 Prachi Chauhan have already approached the family Court by filing a petition No.F-308/2021 for a decree of divorce on mutual consent.

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 quoted para 21 of the judgment of the five-Judge Bench of the Punjab and Haryana High
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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.

7. In the instant case, considering the consent terms placed before us, we are satisfied that the parties have arrived at amicable settlement, voluntarily. Further, the care has also been taken to grant substantial amount to the respondent no.2 Prachi for her future maintenance.

8. In view of the above discussion and in terms of the ratio laid down by the Supreme Court in the case of Gian Singh (supra), we are inclined to quash the FIR. Hence, we proceed to pass the following order.

O R D E R

- i. Criminal Writ Petition No.810 of 2021 (Ashish s/o Ashok Naik and another Vs. The State of Maharashtra and another) and Criminal Writ Petition No.1088 of 2021 (Rekha w/o Harsukhlal Chauhan and another Vs. The State of Maharashtra and another) are hereby allowed in terms of prayer clause 'A'.
- ii. Criminal Writ Petitions are accordingly disposed off.

(**SANDIPKUMAR C. MORE, J.) (**V.K. JADHAV, J.)****

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