

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

CRIMINAL APPLICATION NO.1772 OF 2020

MANISH PRABHAKAR NIKAM
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr L S Mahajan h/f Desale N N.

APP for Respondents: Mr. S S Dande

Advocate for Respondent 2 : Mr. S S Khoche h/f D. P.
Palodkar

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

Dated: March 02, 2022

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PER COURT :-

1. Leave to add the prayer clause about quashing of the proceedings bearing RCC No.147 of 2020 pending before the JMFC, Sakri. Addition be carried out forthwith.

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

3. The applicants/original accused are seeking quashing of the FIR bearing crime No.85 of 2019 registered with Pimpalner police station, Tq. Sakri, District Dhule for the offence punishable under sections

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498-A, 323, 504, 506, 34 of the IPC and also seeking quashing of the proceedings bearing RCC No.147 of 2020 pending before the JMFC, Sakri, on the ground that the parties have arrived at amicable settlement.

4. Learned counsel for the applicants and learned counsel for respondent no.2 submit that due to intervention of the family members of the applicant no.1 and respondent no.2, they have decided to settle their dispute amicably. Further, they have also decided to get separated permanently. In consequence thereof, the applicant no.1 and respondent no.2 have filed the petition before the Civil Judge S.D., Pune bearing HMP No.810 of 2019 for a decree of divorce by mutual consent in terms of section 13 (b) of the Hindu Marriage Act. It is also agreed between the parties that the applicant no.1 husband shall pay an amount of Rs.10 lacs to the respondent no.2 towards the permanent alimony and said amount will be paid to the respondent no.2 after the final decision in the proceedings under section 13 (b) of the Hindu Marriage Act. Copy of the said marriage

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petition no.810 of 2019 is annexed to this application, marked at exhibit R-1 (page 52). As per the terms of the settlement, custody of the child namely Chi. Omkar will remain with the applicant no.1 husband with the visitation rights to respondent no.2.

5. We have also heard the learned APP for the respondent-State.

6. It appears that the parties have arrived at amicable settlement and care has also been taken to give certain lumpsum amount to respondent no.2 towards permanent alimony. Further, the applicant no.1-husband has taken custody of the child by consent with visitation rights to respondent no.2. Respondent no.2 has filed affidavit to that effect. It appears that the parties have decided to reside separately and accordingly, they have also approached the Civil Judge S.D. Pune by filing HMP No.810 of 2019 for a decree of divorce by mutual consent in terms of the provisions of section 13 (B) of Hindu Marriage Act.

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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.”

8. The Supreme Court in paragraph no.61 of the judgment of Gian Singh (supra) has made following observations :-

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“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 predominately 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 the instant case, we are satisfied that the parties have arrived at amicable settlement, voluntarily.

10. In view of the 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 is hereby allowed in terms of prayer clause 'B' and 'B-1'.

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- ii. Criminal application accordingly disposed off.

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

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