

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

965 CRIMINAL APPLICATION NO. 1784 OF 2020

VIJAYKUMAR S/O. LAHU MUNDHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicants : Mr. Shingare K. F.
APP for Respondent No.1-State : Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Ms. Priyanka Deshpande

.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 25th MARCH, 2022**

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. The applicants are seeking quashing of the FIR bearing Crime No. 30/2020 registered with Bardapur Police Station, Taluka Ambajogai, District Beed for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC and also the proceedings arose out of the said crime bearing R.C.C. No. 94 of 2021 pending before the learned 2nd Judicial Magistrate, First Class, Ambajogai 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 and they have jointly filed an application before the 6th Joint Civil Judge Senior Division, Pune to treat the divorce petition filed by applicant no.1 husband as an application under Section 13B of the Hindu Marriage Act, 1955 to grant the decree of divorce by mutual consent. Accordingly, learned Civil Judge Senior Division, Pune allowed the said conversion and also passed the decree of divorce by mutual consent in Marriage Petition No. 99 of 2019 vide order dated 15.09.2021. A copy of the said judgment and order dated 15.09.2021 is placed on record marked at Exhibit R-1. As per the terms of settlement applicant no.1 husband has deposited a lump sum amount of Rs.10,00,000/-, as one time settlement, with mediators Anant Ramkishan Munde and Keshav Rakhmaji Munde.

4. Learned counsel for respondent no.2 submits that respondent no.2 has filed the affidavit-in-reply to that effect and also filed the additional affidavit. Learned counsel submits that as per the deed of settlement, respondent no.2 has already received an amount of Rs.10,00,000/- towards permanent alimony from applicant no.1 vide Demand Draft Nos. 011135 and 011136 dated 19.03.2022 issued in her name. True copies of the said Demand Drafts are annexed to the

additional affidavit marked at Exhibit R-3. Learned counsel submits that the marital relations between applicant no.1 and respondent no.2 have come to an end. The decree of divorce is already passed. In view of the same, respondent no.2 is not interested in prosecuting the present case.

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

6. We have carefully gone through the allegations made in the complaint and the affidavit-in-reply and additional affidavit filed by respondent no.2. It appears that the parties have arrived at an amicable settlement voluntarily and care has also been taken to grant a lump sum amount to respondent no.2 as permanent alimony. Respondent no.2 has already received the entire amount through the Demand Drafts as referred in the additional affidavit.

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 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.”

The Supreme Court in paragraph no.61 of the judgment in **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.

8. The parties had approached to the Civil Judge Senior Division by filing Marriage Petition No. 99/2019 for a decree of divorce on mutual consent. In terms of the provisions of Section 13B of the Hindu marriage Act, 1955 and by judgment and order dated 15.09.2021, the 6th Joint Civil Judge Senior Division, Pune has allowed the said petition and granted the decree of divorce on mutual consent. We are thus satisfied that the parties have arrived at amicable settlement and in view of the same, continuation of

proceedings in connection with the FIR and the charge-sheet would be an abuse of the process of the Court.

9. 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. The criminal application is allowed in terms of prayer clauses “C” and “C-1”.

II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vre