

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

42 CRIMINAL APPLICATION NO.1739 OF 2021

RAJESH MAGAN PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr.L.S. Mahajan, Advocate for the applicants.
Mr.S.D. Ghayal, A.P.P. for respondent No.1.
Mr. Vishnu B. Patil, Advocate for respondent No. 2.

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

DATE : 03-01-2022.

ORDER :

1. Leave to add case number in prayer clause "B".
2. Withe consent of the parties, heard finally at the admission stage.
3. Learned Counsel for the applicants submits that the applicants are seeking quashing of First Information Report (for short "F.I.R.") bearing Crime No.118/2020 registered with Deopur Police Station, District Dhule for the offences punishable under Sections 420, 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.
4. During the pendency of criminal application, charge-sheet has been submitted. Applicants are, thus, also seeking quashing of the proceedings bearing R.C.C. No. 361/2021 pending before the learned Judicial Magistrate, First Class at Dhule on the

ground that the parties have arrived at amicable settlement.

5. Learned Counsel for the applicants and learned Counsel appearing for respondent No. 2 submit that the parties have amicably settled their dispute agreeing the separation by mutual consent. Even they have filed application seeking divorce by mutual consent under Section 13-B of the Hindu Marriage Act bearing Petition F. No. 168/2021 pending before the Family Court, Dhule. It is also pointed out by the learned Counsel appearing for the parties that care has been taken to grant certain amount towards permanent alimony and the same has mentioned in the Petition F. No. 168/2021 in para 3-A. Learned Counsel for respondent No. 2 submits that respondent No.2 has also filed affidavit-in-reply to that effect. Learned Counsel for respondent No. 2 submits that respondent No.2 has already withdrawn the proceedings filed under the Prevention of the Women from Domestic Violence Act on account of the aforesaid settlement. The copy of the order of withdrawal is annexed to the application and marked at Exhibit-B.

6. We have also heard learned A.P.P. for the respondent – State.

7. In the case of ***Gian Singh vs. State of Punjab and another***, reported in ***(2012) 10 SCC 303***, the Supreme Court has referred the view taken by the Five-Judge Bench of the Punjab and Haryana High Court in the case of ***Kulwinder Singh and others vs. State of Punjab and another***. In para 48, the Supreme Court has observed that the five-judge Bench of Punjab and Haryana High

Court in the aforesaid case has referred to a few decisions of the Court for exercising the power under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for settlement and further reproduced the guidelines framed by five-Judge Bench of Punjab and Haryana High Court in the aforesaid case. Clause (a) of para 21 of the said guideline is important for the present discussion and the same is reproduced herein below :

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

The Supreme in the above cited case in para 61 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. : (1) 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the 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 a 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 the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

8. It appears on perusal of the affidavit of respondent No.2 informant that the parties have arrived at amicable settlement voluntarily and care has also been taken to grant permanent alimony of Rs. 2,60,000/- agreed to be paid at the time of obtaining the decree of divorce by mutual consent. Further, the parties have already approached the Family Court by filing Petition F. No.168/2021 for divorce by mutual consent.

9. In view of the same and in terms of ratio laid down by the Supreme Court in the above cited case, we proceed to pass the following order.

ORDER

- (i) Criminal Application No.1739 of 2021 is allowed in terms of prayer clause “B”.
- (ii) Criminal Application No. 1739 of 2021 is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)