

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CRIMINAL APPLICATION NO. 3883 OF 2019

ASHWINI W/O. SHARADCHANDRA PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Gade Akash D.
APP for Respondent No.1-State : Mr. S. S. Dande
Advocate for Respondent No.2 : Mr. S. B. Gastgar

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949 CRIMINAL WRIT PETITION NO. 1197 OF 2021

SHARADCHANDRA @ SHARAD S/O. SUBHASHRAO PATIL AND
OTHERS
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Gastgar Santosh B.
APP for Respondent No.1-State : Mrs. D. S. Jape
Advocate for Respondent No.2 : Mr. Gade Akash D.

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**WITH
CRIMINAL APPLICATION NO. 1989 OF 2020**

SHARADCHANDRA S/O. SUBHASHRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Gastgar Santosh B.
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. Gade Akash D.

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 20th JANUARY, 2022**

PER COURT:-

1. Learned counsel for respondent no.2-complainant (wife) in Criminal Writ Petition No. 1197 of 2021 and Criminal Application No. 1989 of 2020, submits across the bar an affidavit-in-reply on behalf of respondent no.2 in both the matters. The same are taken on record. Copies of the same are already given to the other side.
2. In Criminal Application No. 3883 of 2019, learned counsel for respondent no.2-complainant (husband) submits across the bar an affidavit-in-reply on behalf of respondent no.2. The same is taken on record. A copy of the same is already given to the other side.
3. Heard finally, with consent at admission stage.
4. In Criminal Writ Petition No. 1197 of 2021, the petitioners-original accused persons are seeking quashing of the proceedings bearing R.C.C. No. 295/2020 under Sections 498-A, 323, 504, 506 and 34 of IPC pending before the Judicial Magistrate, First Class, Ambajogai, District Beed.

5. In Criminal Application No. 1989 of 2020, the applicant-original accused is seeking quashing of the FIR bearing crime no. 163/2019 registered with Deoni Police Station, District Latur for the offence punishable under Section 307 of IPC and also seeking quashing of the proceedings bearing Sessions Case No. 17/2021 pending before the Additional Sessions Judge, Udgir.

6. In Criminal Application No. 3883 of 2019, the applicant is seeking quashing of the FIR bearing crime no. 164/2019 registered with Deoni Police Station, Latur for the offence punishable under Sections 341 and 323 of IPC.

7. In all these matters, the parties have arrived at an amicable settlement.

8. Petitioner no.1 Sharadchandra in Criminal Writ Petition No. 1197 of 2021 and respondent no.2 Ashwini are husband and wife. On the basis of the complaint lodged by respondent no.2 Ashwini, the aforesaid criminal proceeding vide R.C.C. No. 295 of 2020 under Sections 498-A, 323, 504, 506 and 34 of IPC is now pending.

In Criminal Application No. 1989 of 2020, on the basis of the complaint lodged by respondent no.2 Ashwini (wife), another crime bearing no. 163/2019 came to be registered against the husband Sharadchandra alone for the offence punishable under Section 307 of IPC.

So far as Criminal Application No. 3883 of 2019 is concerned, on the basis of the complaint lodged by the husband Sharadchandra, crime no. 164/2019 came to be registered against wife Ashwini for having committed the offence punishable under Sections 341 and 323 of IPC.

9. Learned counsel for the petitioners/applicants and learned counsel for the respondents submit that the parties have arrived at an amicable settlement. The husband and wife *inter se* have decided to end their marital life permanently and they are now residing separately. They have also filed the proceedings for divorce by mutual consent bearing HMP No. 95 of 2021, which is pending before the C.J.S.D., Ambajogai. It is submitted that the husband has agreed to pay an amount of Rs. 17,00,000/- towards permanent alimony and the expenses of marriage. The said amount is deposited before learned C.J.S.D, Ambajogai in pending HMP No. 95 of 2021 and it is

agreed between the parties that the said amount will be paid to respondent no.2-wife Ashwini after disposal of all the matters before this Court.

10. We have heard learned APP for the respondent State. So far as Criminal Application No. 1989 of 2020 is concerned, in response to our queries, learned APP on the basis of the charge-sheet submits that the complainant Ashwini (wife) has sustained two abrasions on elbow, swelling on left side of abdomen below ribs and blunt trauma on ankle joint. However, all the four injuries are simple in nature caused by blunt object. The said injury certificate is at page 68 of the application.

11. We have carefully gone through the allegations made in all the complaints which are subject matter of all three matters. We have also perused the charge-sheet and also carefully gone through the affidavit of the parties submitted before us. It appears that the parties have arrived at an amicable settlement and in terms of the settlement, the parties have already approached the court by filing H.M.P. No. 95 of 2021 for a decree of divorce by mutual consent and the said H.M.P. is pending before the C.J.S.D., Ambajogai. Further, care has also been taken to pay a lump sum amount towards permanent alimony.

12. In the case of ***Gian Singh vs. State of Punjab and another***, reported in ***(2012) 10 SCC 303***, the Supreme Court in para 48 of the judgment has referred the view expressed by the five-Judge Bench of the Punjab and Haryana High Court in ***Kulwinder Singh v. State of Punjab (2007) 4 CTC 769***. In the same para, the Supreme Court has also referred the guidelines framed by the five-Judge Bench of the Punjab and Haryana High Court. The guideline (a) which is relevant for the present discussion is reproduced herein below:

“(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.

13. In the case of ***Narinder Singh and others v. State of Punjab and others***, reported in (2014) 6 SCC 466 [MANU/SC/0235/2014], in para no. 31, the Supreme Court after referring various decisions on the subject, has laid down the principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of Cr.P.C. The said principles are summed up in para 31, Clause (VI) of which is relevant for the present discussion and reproduced herein below:

“31(VI). Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

14. So far as the charge under Section 307 of IPC as levelled against the husband is concerned, the respondent-wife has sustained simple injuries and the husband allegedly gave dash by motorcycle. Further, none of the injuries is on the vital part of the body. In view of the settlement, there is no possibility of conviction and the chances of conviction are remote and bleak.

15. We are of the opinion that the parties have arrived at an amicable settlement voluntarily. They have decided to end their marital ties permanently and for that purpose, they have already approached the Civil Court for a decree of divorce on mutual consent. Further, substantial amount is agreed to be paid to the wife towards her permanent alimony and marriage expenses.

16. In view of the above, and in terms of the ratio laid down by the Supreme Court in the above cited cases, we proceed to pass the following order:

ORDER

- I. Criminal Application No. 3883 of 2019 is allowed in terms of prayer clause (C).
- II. Criminal Writ Petition No. 1197 of 2021 is allowed in terms of prayer clause (B).

III. Criminal Application No. 1989 of 2020 is allowed in terms of prayer clauses (C) and (C-1).

IV. All the three matters are accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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