

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 CRIMINAL APPLICATION NO. 1845 OF 2021

SAIRAJ S/O BHANUDAS GADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. R.S. Wani h/f Mr. Anil S. Bajaj
APP for Respondent No.1-State : Mr. R. V. Dasalkar
Advocate for respondent No.2 : Ms. H. M. Manglani

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 12th APRIL, 2022**

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The applicants are seeking quashing of F.I.R. No. 214 of 2021 registered with M.I.D.C. CIDCO Police Station, Aurangabad for the offence punishable under Sections 323, 498-A, 504 r.w. 34 of I.P.C. and also seeking quashing of the proceedings vide R.C.C. No. 2295 of 2021 pending before the learned Judicial Magistrate, First Class, Aurangabad, on the ground that the parties have arrived at an amicable settlement.
3. Learned counsel appearing for the applicants and learned counsel appearing for respondent No.2 submit that the parties have arrived at an amicable settlement and decided to put an end to the marital ties and all the proceedings pending in the Courts. The

settlement terms are reduced into writing and the same has been placed before the Family Court, Aurangabad. Learned counsel for respondent No.2 submits that applicant No.1-husband has filed a petition before the Family Court, Aurangabad for a decree of divorce and the same is now sought to be converted into a petition seeking decree of divorce on mutual consent in terms of the provisions of Section 13-B of the Hindu Marriage Act, 1955. The compromise terms are worked out and the same has been placed before the Family Court. Learned counsel for respondent No.2-informant submits that applicant No.1-husband has agreed to pay an amount of Rs.10,00,000/- (Rupees Ten Lakh only) to respondent No.2 as permanent alimony and the said amount has been deposited before the Family Court. It is agreed between the parties that the said amount will be paid to respondent No.2 after the decree of divorce is passed. Learned counsel for respondent No.2 has filed a consent affidavit to that effect.

4. We have also heard learned A.P.P. for respondent No.1 State.

5. 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.”

6. Thus, the Supreme Court in para No.61 of the judgment in the case of ***Gian Singh vs. State of Punjab and others (supra)*** 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; (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 pre-dominatingly 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, it appears that the parties have arrived at the amicable settlement voluntarily. The parties have decided to put an end to the marital ties and all the proceedings pending against each other. Applicant No.1-husband has filed a petition before the Family Court, Aurangabad for a decree of divorce and the same is now sought to be converted into a petition seeking decree of divorce on mutual consent in terms of the provisions of Section 13-B of the Hindu Marriage Act, 1955. Further, care has also been taken to pay certain amount to respondent No.2 towards permanent alimony.

8. 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:-

O R D E R

- I. Criminal application is allowed in terms of prayer clauses "B" and "B-1".
- II. Criminal application is disposed of accordingly.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)