

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

CRIMINAL APPLICATION NO. 2073 OF 2021

Shaikh Samir s/o Shaikh Karim

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. Sohail Subhedar, advocate holding for Mr. N. S. Ghanekar,
advocate for the applicant

Mr. M. M. Nerlikar, APP for Respondent No.1.

Mr. M. M. Rapanwad, advocate for Respondent No.2.

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

DATE : 21st January, 2022.

PC :

1 The applicant-accused is seeking quashing of the proceedings of Sessions Case No.31 of 2018, pending before the Sessions Court at Aurangabad, for the offences punishable under Sections 376 and 506 of the Indian Penal Code, out of Crime No. 52 of 2017, registered with Ajintha Police Station, on the ground that the parties have arrived at an amicable settlement.

2 Learned Counsel for the applicant-accused and learned Counsel for Respondent No.2-informant submit that after lodging the complaint, Respondent No.2-informant got married

with the applicant-accused on 26.08.2019. Said marriage had taken place with consent of family members of both the sides and in the presence of relatives of both the sides. Said marriage is also registered with *Darul-Quaza-Imarat-E-Shariyah-Marathwada*. Copy of the marriage certificate bearing *Siyah* No. 249227 is also annexed as Exhibit R-1. The learned Counsel even submit that out of the said wedlock, the couple is blessed with daughter on 14.06.2020, namely Ayisha. Copy of birth certificate of Ayisha is also annexed as Exhibit R-2.

3 We have also heard learned A. P. P. for Respondent-State. The learned A. P. P., on instructions, submits that there are no antecedents of the applicant.

4 We have carefully gone through the allegations made in the complaint. It appears that there were consensual relations between the applicant-accused and Respondent No.2-informant and even the applicant had given promise to marry with Respondent No.2. The complaint came to be lodged with the allegation that the applicant, under the pretext of promise of marriage with Respondent No.2, performed sexual intercourse with her, but has not fulfilled the said promise. However, at present,

Respondent No.2-informant and applicant-accused got married and their marriage was solemnized on 26.08.2019. Copy of the marriage certificate is annexed with the affidavit-in-reply. Further, the couple is blessed with daughter on 14.06.2020, namely Ayisha, Copy of the birth certificate is also annexed with the affidavit-in-reply. Respondent No.2-informant has filed the affidavit-in-reply to that effect. According to her, her married life is quite happy and the applicant is taking care of her. They have arrived at settlement out of their free will and consent without any coercion.

5 In the case of *Gian Singh vs. State of Punjab and others*, reported in *(2012) 10 SCC 303*, the Hon'ble 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*. The five-Judge Bench of the Punjab and Haryana High Court, in para 21 of the judgment, by placing reliance on the judgments of the Supreme court in the cases of *Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551*, *State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335*, *State of Karnataka v. L. Muniswamy (1977) 2 SCC 699*, *Simrikhia v. Dolley Mukherjee (1990) 2 SCC 437*, *B.S. Joshi v. State of Haryana (2003) 4 SCC 675* and *Ram Lal*

v. *State of Jammu and Kashmir* (1999) 2 SCC 213, has framed the guidelines for quashing of the criminal proceeding on the ground of settlement. Clause (e) of the said guidelines is relevant which is reproduced herein below :

“21 (e) *The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.*

6 For certain categories of offences, the Hon’ble Supreme Court has observed that the proceedings should not be quashed. So far as the case involving allegations of rape, it is observed by the Hon’ble Supreme Court that there must be clear-cut allegations of rape.

7 The Hon'ble 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-dominantly 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 In the instant case, we are satisfied that the parties have arrived at the settlement voluntarily. They are now happily married and are blessed with one daughter.

9 In view of the above and in terms of the ratio laid down by the Hon’ble Supreme Court in the afore-cited case, we proceed to pass the following order:

(i) Criminal Application is hereby allowed in terms of prayer clause “B”.

10 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE