

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

69 CRIMINAL WRIT PETITION NO.1048 OF 2021

AJINKYA DHANANJAY MIRKHELKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Madhav Shete h/f. Mr. Prabhakar K. Joshi
APP for Respondents: Mr. K.S. Patil.

**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATE : 7TH MARCH, 2022.**

PER COURT:

1] Heard finally with consent at admission stage.

2] The petitioner is seeking quashing of FIR No. 237 of 2021 registered with Police Station Pundlikar Nagar for the offences under Sections 354-D(2), 494, 500, 506 r/w. 34 of IPC, on the ground that parties have arrived at amicable settlement.

3] The learned counsel for petitioner and learned counsel appearing for respondent No.3 submits that, because of the day to day quarrels and the temperaments made life of the parties miserable and it has become impossible for them to pull on their lives, as husband and wife and therefore, they have arrived at a settlement to dissolve their marriage by mutual consent. Accordingly, it has been agreed between the parties that the petitioner shall pay an amount of Rs. 16,50,000/- to the to respondent No.2 as a lump sum amount towards future maintenance and the custody of the child will remain with the wife of the petitioner

forever and the petitioner shall also deposit Rs. 7,000/- per month in the Recurring Deposit Account in a Nationalised Bank to be in the name of daughter - Anaya till she attains the age of majority, as detailed in the said agreement and the petitioner shall also bear the expenses towards education and coaching classes of the daughter Anaya.

4] The learned counsel appearing for both the parties submit that Family Court, by judgment and order dated 29.1.2022 has dissolved the marriage of the petitioner and respondent No.2 on mutual consent in terms of the provisions of Section 13B of the Hindu Marriage Act. The terms of settlement have been duly referred in the said judgment and order passed by the Family Court.

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

6] We have carefully gone through the contents of the complaint. It appears that the respondent No.3 herein is the legally wedded wife of the petitioner and the couple is blessed with one girl child, namely, Anaya, aged 7 years. It has been alleged in the complaint that the petitioner has developed illicit sexual relations with one woman and thus, the petitioner and the respondent No.3 have decided to get separated permanently. They have filed the petition for divorce by mutual consent on 1.1.2021. However, during the pendency of that petition, the petitioner has performed marriage with the said woman. Further it has been alleged that from February, 2022, the petitioner has sent messages and posted obscene photographs of certain women and attempted to defame the respondent No.3. On the basis of the said allegations, the aforesaid crime came to be registered.

7] It further appears that the parties have arrived at an amicable settlement since it is difficult for them to pull on life as husband and wife. As noted earlier, by judgment and order dated 29.1.2022, the Family Court has also passed a decree of divorce under Section 13B of the Hindu Marriage in terms of the settlement arrived at between the parties.

8] In the case of Gyan Singh, the Honourable Apex Court in para 21(a) has observed thus :

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 expressed by five-Judge Bench of the Punjab and Haryana High Court in the judgment delivered in the case of **Kulwinder Singh v. State of Punjab (2007) 4 CTC 769** and further referred the guidelines framed by the Punjab and Haryana High Court in the said case for quashing of proceedings on the basis of settlement. The Supreme court has also reproduced the guidelines of Punjab and Haryana High Court in para 48. So far as present application is concerned, the guidelines as mentioned in para 21(a) is relevant, which is reproduced herein-below:-

“21.

(a) cases arising from matrimonial discord, even if other offences are introduced for aggravation of the case.”

7. 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 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."

9] We have carefully gone through the terms of settlement referred to by the learned Judge of the Family Court in its judgment. We are satisfied that the parties have arrived at an amicable settlement voluntarily. Care has also been taken to grant lump sum amount towards future maintenance to respondent No.3 wife and also care has been taken to grant certain monthly amount for maintenance of the girl. It has also been agreed that custody of girl child shall remain with the respondent No.3 wife. The arrangement for educational expenses etc. of the daughter Anaya, as detailed and referred in the judgment of the Family Court has also been made.

10] In view of the above, and in terms of the ratio laid down by the Apex Court in the above cited case, we proceed to pass the following

order.

: ORDER :

[I] Criminal Writ Petition is allowed in terms of prayer clause (C).

[II] Criminal Writ Petition is accordingly disposed of.

[SANDIPKUKAR C. MORE]
JUDGE

[V.K. JADHAV]
JUDGE.

grt/-