

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

983 CRIMINAL WRIT PETITION NO.1136 OF 2021

**JITENDRA KARTAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Petitioner : Mr. Harshal Prakash Randhir
APP for Respondent no.1-State: Mr. S. D. Ghayal
Advocate for Respondent no.2 : Mr. M. R. Wagh

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

DATED : 17th MARCH, 2022.

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P. C. :

1. Leave to add Sessions Case No.125 of 2021, pending before Sessions Judge, Jalgaon, in prayer clause "B" forthwith.
2. Heard finally with consent of the parties at admission stage.
3. The petitioner is seeking quashing of the FIR bearing Crime No. 134 of 2021 registered with Jalgaon City Police Station for the offence punishable under Sections 376, 323 of IPC and also seeking quashing of the proceeding of Sessions Case No. 125 of 2021, pending before Sessions Judge, Jalgaon on the ground that the parties have arrived at amicable settlement.

4. Learned counsel for the petitioner and the learned counsel for respondent no.2 submit that the petitioner and respondent no.2 both were major at the time of alleged incident. Initially there were friendly relations between them. After some time they fell in love with each other. However, due to some misunderstanding, the complaint came to be lodged. Learned counsel submits that allegations have been made against the petitioner to the effect that he had committed sexual intercourse against her will by giving false promise of marriage. Learned counsel appearing for the parties submit that the petitioner and respondent no.2 got married on 28/07/2021 as per the Hindu Vedic rites and rituals and accordingly marriage certificate to that effect is annexed with the petition marked as Exhibit-C. Learned counsel submit that even the marriage also came to be registered in terms of the provisions Special Marriage Act, 1954 and said certificate of marriage dated 09/12/2021 is submitted today before the court. The same is taken on record and marked as Exhibit-X for identification.

5. We have also heard the learned APP for the State. Learned APP submits that there are no antecedents.

6. We have carefully gone through the contents of the complaint and also perused the charge sheet. We have also carefully gone

through the annexures and the contents of the compromise pursis. It appears that the petitioner and respondent no.2 both were major at the time of alleged incident. It further appears that the allegations about commission of rape have been made on the ground that by giving false promise of marriage the petitioner had performed sexual intercourse with respondent no.2 against her will. However, at present, both of them got married and the marriage is also registered under the provisions of Special Marriage Act 1954. The certificate to that effect is also produced before us. Further more, on 28/07/2021 they also got married as per the Hindu rites and rituals and the certificate to that effect is also filed on record with the petition marked as Exhibit-C.

7. 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 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, has framed the guidelines for quashing of the criminal proceeding on the ground of settlement. Para 21 of the said case of *Kulwinder Singh* is reproduced by the

Supreme Court in para 48 of the judgment in *Gian Singh*. Clause 21(e) which is relevant for the present discussion reads as under :

“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.

8. It has been observed in clause (e) of para 21 that the heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. However, in the instant case, there are no clear-cut allegations of rape. It appears from the contents of the complaint itself that the petitioner and respondent no.2 fell in love with each other and even though the petitioner has performed sexual intercourse with

respondent no.2 on various occasions by giving her promise of marriage, failed to fulfill the said promise, consequently, respondent no.2 has filed complaint and on the basis of her complaint the aforesaid crime came to be registered against the petitioner for having committed an offence punishable under Section 376 of IPC. The parties have now arrived at amicable settlement and they got married and living happy married life together.

9. In para No.61 of the case ***Gian Singh*** (supra), the Hon'ble Supreme Court 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.”

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

ORDER

- I) Writ petition is hereby allowed in terms of prayer clause “B” .
- II) The petitioner and respondent no.2 jointly shall deposit costs of Rs.5,000/- (Rs. Five thousand) and same shall be paid to the High Court Legal Services Sub-Committee, Aurangabad.
- III) Writ petition is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)**(V. K. JADHAV, J.)**

vsm/-