

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

973 CRIMINAL APPLICATION NO. 2403 OF 2021

1. SHAIKH NAIM S/O SHAIKH CHAND
2. SHAIKH MUBIN S/O SHAIKH CHAND
3. SHAIKH NADIM S/O SHAIKH CHAND
4. SHAIKH MATIN S/O SHAIKH CHAND

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Shaikh Mohammad Naseer A.

APP for Respondent No.1-State : Mr. S. D. Ghayal

Advocate for Respondent No.2 : Mr. Syed Zahed Ali

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CORAM : V. K. JADHAV AND

SANDIPKUMAR. C. MORE, JJ.

DATED : 12th JANUARY, 2022

PER COURT:-

1. Heard.

2. The applicants-original accused are seeking quashing of the charge-sheet bearing R.C.C. No. 302336 of 2015 filed pursuant to the crime bearing FIR No. I-312 of 2015 registered with Cidco Police Station, Aurangabad for the offence punishable under Sections 498-A, 354-A, 323, 504, 506 r/w 34 of IPC on the ground that the parties have arrived at an amicable settlement.

3. Learned counsel for the applicants and the learned counsel appearing for respondent no.2 submit that after registration of the crime, respondent no.2-wife has approached to the Family Court, East Distt. Karkardooma, Delhi for maintenance by filing petition no. 599 of 2019 (2017) and in the process of counseling, applicant no.1-husband and respondent no.2-wife have arrived at an amicable settlement and the terms of compromise were reduced into writing and placed before the said court at Delhi. By order dated 27.08.2021, the Family Court, East Distt. Karkardooma, Delhi has taken on record the settlement agreement Exhibit P-1 dated 23.03.2021 and also recorded the joint statement of the parties separately. Learned Judge of the Family Court has disposed of the said petition in view of the settlement between the parties.

4. It appears that the parties have settled their dispute amicably before the court counselor and on perusal of the said compromise terms, it appears that the parties have agreed to dissolve their marriage by mutual consent in accordance with law as provided under Section 13(B) of the Hindu Marriage Act. It is further agreed between the parties that applicant no.1-husband shall pay the wife a sum of rupees four lakh as full and final settlement against streedhan and dowry maintenance in two installments by way of DD/pay order.

It is further agreed between the parties that respondent no.2 will be entitled for the custody of the daughter Inaaya aged six years born to them from the wedlock, who is living with respondent no.2-wife, and the applicant will have visitation rights once in six months. It is also agreed between the parties that the parties will withdraw all the cases which are pending in the Court.

5. Learned counsel for respondent no.2 has filed an affidavit-in-reply to that effect and in terms of the settlement arrived between the parties, respondent no.2 has received the entire amount of rupees four lakh as agreed. Further, the custody of the said daughter is now with respondent no.2 and the applicant-husband is having visitation rights once in six months.

6. In the case of *Gian Singh vs. State of Punjab and another*, 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, 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. 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(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.”

Further, in para 61 of the judgment in ***Gian Singh*** (supra), the 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; (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 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 serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 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 the 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 affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

7. It appears that the parties have arrived at an amicable settlement voluntarily and the terms of the settlement are also worked out at the Family Court, East Distt. Karkardooma, Delhi. Respondent no.2 has also received the amount as agreed between the parties and further, in terms of the said settlement, respondent no.2 is not pursuing the present prosecution and she has given no objection for quashing of the proceedings on settlement.

8. In view of the settlement arrived at between the parties and the ratio laid down by the Supreme Court in the above cited case, the criminal application is allowed in terms of prayer clause "B". The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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