

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

CRIMINAL APPLICATION NO.2504 OF 2021

01 Manisha w/o Madhukar Jadhav

02 Madhukar s/o Dattarao Jadhav

Applicants

Versus

01 The State of Maharashtra;

02 The Police Station Officer,
Mantha Police Station,
Tq. Hadgaon, District Nanded.

Respondents

Mr. H. S. Surve, advocate for the applicants
Ms. V. S. Choudhari, APP for Respondents.

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

DATE : 16th February, 2022.

PC :

01 By consent of learned Counsel for respective parties,
heard finally at the stage of admission.

02 The wife and husband – both have jointly filed this
application seeking quashing of the First Information Report and
the consequential proceedings on the basis of settlement arrived at
between them.

03 Learned Counsel for the applicants submits that the parties have arrived at an amicable settlement for setting aside proceedings of Regular Criminal Case No. 88/2019, for the offence punishable under Sections 498A, 504 and 506 of the Indian Penal Code, pending before the Judicial Magistrate, First Class, Hadgaon and accordingly, in terms of those settlement, they have filed Petition No. A-123 of 2019 before the Family Court at Aurangabad, seeking divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. Copy of the settlement pursis filed before the Family Court is placed before us as Exhibit-D at page 29 of this application.

04 The parties have filed before us a joint affidavit. The applicant no.1 wife has already withdrawn the proceedings initiated by her against applicant no.2 – husband. All the terms and conditions, agreed and mutually decided between them before the Family Court, are fulfilled. Thus, they have presented a Divorce Petition by mutual consent before the competent Court. They have agreed to get separated permanently. They have withdrawn all the adverse allegations made against each other.

05 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 (a) of the said guidelines is relevant which is reproduced herein below :

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

6 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.”

7 In the instant case, it appears that the parties have arrived at an amicable settlement voluntarily. A care has also been taken to grant certain amount as permanent alimony to applicant – wife and an amount of Rs. 3,50,000/- has been deposited before the Family Court in the pending petition seeking divorce by mutual consent.

8 In view of the same and in terms of the ratio laid down by the Hon’ble Supreme Court in the aforesaid case, we proceed to pass the following order:

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

9 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb