IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

971 CRIMINAL WRIT PETITION NO.1291 OF 2021

1. Dinesh Shankarnarayan Kumarkandath Nair
2. Shankarnarayan Kumarkandath Nair
3. Vatsala Shankarnarayan Kumarkandath Nair
4. Ganesh Shankarnarayan Kumarkandth Nair
5. Maya Ganesh Nair — Petitioners

Versus

1. The State of Maharashtra
2. Veena Dinesh Nair — Respondents

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Mr. Menezes Joslyn, Advocate for the petitioners.
Mr. R.V. Dasalkar, A.P.P. for respondent No. 1.
Mr. , Advocate for respondent No.2.

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

DATE : 22-03-2022.

P.C. :

1. Heard finally with consent at the admissions stage.

2. The petitioners are seeking quashing of the proceedings bearing R.C.C. No. 1906/2022 pending before the Judicial Magistrate, First Class, Aurangabad arising out of Crime No. 177/2020 registered with Satara Police Station for the offences punishable under Sections 498-A, 323, 505, 506 read with Section 34 of the Indian Penal Code, on the ground that the parties have arrived at amicable settlement.

3. Learned Counsel for the petitioners and learned Counsel for respondent No. 2 submits that the parties have arrived at amicable settlement and in terms of the settlement they have filed petition for divorce on mutual consent in terms of the provisions of Sect6ion 13-B of the Hindu Marriage Act before the Family Court, Palakkad, State of Kerla vide O.P. No.1115/2021. The said petition is still pending. Learned Counsel appearing for the parties submit that it is agreed between the parties that petitioner No. 1 – husband shall pay an amount of Rs. 6,00,000/- (Rupees Six Lacs) to respondent No.2 towards permanent alimony by way of account transfer to the account of respondent No. 2. It is further agreed between the parties that petitioner No.1 – husband shall pay Rs. 50,000/- (Rupees Fifty Thousand) per trip to respondent No. 2 towards travelling charges to attend the dates before the Palakkad Family Court in the State of Kerla and the amount

shall be paid at the time of filing of the affidavit before the Family Court and subsequent dates if contingency so arises. Parties have mutually agreed to withdraw all the litigation filed against each other in respective Courts of law.

4. Learned Counsel for respondent No. 2, on instructions from respondent No. 2 who is present in person, submits that respondent No. 2 has received entire amount of Rs. 6,00,000/- and she has no objection if this F.I.R. and the consequential proceedings are quashed.

5. We have also heard learned A.P.P. for respondent No.1 – State.

6. We have carefully gone through the contents of complaint and affidavit of respondent No. 2 and also perused copy of the petition filed before the Family Court of Palakkad, State of Kerla. It appears that the parties have arrived at amicable settlement and they have already approached the Family Court for obtaining decree of divorce on mutual consent in terms of Section 13-B of the Hindu Marriage Act.

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(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."*

8. 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."

9. In the instant case, we are satisfied that the parties have arrived at amicable settlement voluntarily and care has also been taken to grant an amount of Rs. 6,00,000/- to respondent No. 2 towards permanent alimony. Further, a care has also been taken to pay an amount of Rs.50,000/- per trip to attend dates of Family Court at

Palakkad, State of Kerla, since respondent No. 2 resides in the State of Maharashtra.

10. In view of the above and in terms of the ratio laid down in the above-cited case, we proceed to pass the following order.

ORDER

(i) Criminal Writ Petition is hereby allowed in terms of prayer clause [B].

(ii) Criminal Writ Petition is accordingly disposed of.

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