

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

978 CRIMINAL WRIT PETITION NO.1402 OF 2017

1. Shaikh Faraz Shaikh Zahoor
2. Shaikh Farzana Shaikh Zahoor
3. Shaikh Zahoor Abdul Sattar
4. Farha Tabraj Siddiqui. Petitioners

Versus

1. The State of Maharashtra
2. Sayyeda Azarabegum Shaikh Faraz Respondents

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Mr. Joslyn Menezes, Advocate for the petitioners.

Mr. S.S. Dande, A.P.P. for respondent No. 1.

Mr. S.N. Lale Yelwatkar, Advocate for respondent No.2.

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

DATE : 30-03-2022.

P.C. :

1. Heard finally with consent at the admission stage.
2. The petitioners / original accused are seeking quashing of F.I.R. bearing Crime No. 265/2017 registered with City Chowk Police Station, Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 of the Indian Penal Code and under Section 3 of the Protection of

Women from Domestic Violence Act and also charge-sheet bearing R.C.C. No. 538 of 2020 pending before the Judicial Magistrate, First Class, Aurangabad, on the ground that the parties have arrived at amicable settlement.

3. Learned Counsel for the petitioners and learned Counsel for respondent No. 2 submit that initially respondent No.2 had filed consent affidavit through one Advocate in this writ petition, however, the said Advocate remained absent continuously and therefore, by order dated 9th March 2020 we have appointed present Counsel to represent respondent No.2 at the expenses of the State. Accordingly, respondent No.2 has filed additional affidavit through the appointed Counsel. Learned Counsel for the petitioners and respondent No. 2 submit that due to intervention of the relatives the parties have arrived at amicable settlement and a compromise purshis to that effect was also submitted before the learned Judicial Magistrate, First Class. In terms of the said compromise purshis learned Magistrate disposed of the proceedings initiated under the provisions of Protection of Women from Domestic Violence Act bearing PWDVA No.126/2017. Learned Counsel appearing for the parties submit that the parties have executed Khulanama and

translated copy of the said Khulanama is annexed to the additional affidavit of respondent No. 2. Learned Counsel appearing for the parties submit that petitioner No.1 – husband has agreed to pay an amount of Rs. 2,00,000/- (Rupees Two Lakhs) to respondent No. 2 towards her permanent alimony and out of the said amount, an amount of Rs. 1,30,000/- has already paid when the pending matter before the Magistrate was withdrawn and remaining amount of Rs. 70,000/- has been paid before filing of this affidavit. Learned Counsel for respondent No. 2, on instructions, submits that respondent No.2 has received entire amount of Rs. 2,00,000/-. Learned Counsel for respondent No. 2 submits that in view of compromise between the parties and in view of Khulanama executed, respondent No.2 is no more interested in prosecuting the criminal case.

4. We have also heard learned A.P.P. for the respondent – State.

5. We are satisfied that the parties have arrived at amicable settlement voluntarily. As per the contents of Khulanama, certain amount has been agreed to be paid to respondent No. 2 towards permanent alimony and also

maintenance for Iddat period. It appears that respondent No.2 has received the entire amount.

6. 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.”

7. 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.”

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

ORDER

- (i) Criminal Writ Petition is hereby allowed in terms of prayer clauses [B] and [B-1].
- (ii) Criminal Writ Petition is accordingly disposed of.
- (iii) In view of the disposal of Criminal Writ Petition, Criminal Application No. 6837 of 2017 is also disposed of.
- (iv) We quantify the fees of the appointed Counsel at Rs. 3,000/- (Rupees Three Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)