

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

CRIMINAL APPLICATION NO. 4125 OF 2019

Vishal Amrutrao Gadekar & others

Applicants

Versus

The State of Maharashtra & another

Respondents

Ms. Sunita G. Sonawane, advocate for the applicants

Mr. K. S. Patil, APP for Respondent No.1.

Mr. B. S. Dhawale, advocate for Respondent No.2.

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

DATE : 24th March, 2022.

PC :

1 Heard finally at the stage of admission itself by consent of learned Counsel for respective parties at the stage of admission.

2 The applicants-accused are seeking quashing of the First Information Report bearing Crime No. 0389/2019, registered with Kadim-Jalna Police Station, for the offences punishable under Sections 498A, 323, 504, 506 of the Indian Penal Code and under Sections 3 & 4 of the Dowry Prohibition Act and are also seeking quashing of the proceedings bearing RCC No. 102/2020, pending before the learned Chief Judicial Magistrate, Jalna, on the ground

that the parties have arrived at an amicable settlement.

3 Learned Counsel for the applicants and learned Counsel appearing for Respondent No.2-informant submit that during pendency of the Criminal Application, the parties have decided to settle the disputes between them and to obtain a decree of divorce by mutual consent. Accordingly, applicant no.1-husband and Respondent No.2 have filed a Petition bearing No. F-84/2020 before the Family Court at Jalna for obtaining decree of divorce by mutual consent in terms of the provisions of Section 13B of the Hindu Marriage Act and same is pending for final disposal.

4 Learned Counsel for both the parties further submit that it is agreed between the parties that the applicant-husband shall pay an amount of Rs. 10,00,000/- to Respondent No.2-wife as permanent alimony. The learned Counsel for Respondent No.2 submits that Respondent No.2 has received an amount of Rs. 5,00,000/- at the time of filing Petition No.F-84/2020 before the Family Court at Jalna vide Demand Draft No. 264781, dated 01.09.2021 and the remaining amount will be disbursed at the time of filing evidence affidavit in the said petition before the

Family Court at Jalna. It is also agreed between the parties that after withdrawing all the pending cases against each other, the evidence affidavit will be filed in the petition pending before the Family Court. The learned Counsel submits that even in pursuant to the said agreement, Respondent No.2 has withdrawn the proceedings bearing PWDVA No.67/2021. Copy of the award passed in *Lok Adalat* is marked as Exhibit R-2. Learned Counsel for Respondent No.2 submits that Respondent No.2-informant is no more interested in prosecuting the First Information Report and the case arising out of the said crime bearing RCC No.102 /2020.

5 We have also heard learned A. P. P. for Respondent-State.

6 It appears that the parties have arrived at an amicable settlement and they have also approached the Family Court by filing petition for decree of divorce by mutual consent. Further, certain amount has also been paid to Respondent No.2 towards permanent alimony out of the agreed amount between the parties. Further, the settlement between the parties has also been acted upon by them by withdrawing the proceedings bearing PWDVA No. 67/2021.

7 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.*”

8 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.”

9 It appears that the parties have arrived at an amicable settlement voluntarily. A care has also been taken to pay permanent alimony to Respondent No.2 and 50% of the amount out of the agreed amount has been paid to Respondent No.2 and remaining amount will be paid after filing of the evidence affidavit in the pending petition before the Family Court, Jalna.

10 In view of the above and in terms of the ratio laid down by the Hon'ble Supreme Court in the afore-cited case, we proceed to pass the following order:

(i) Criminal Application is hereby allowed in terms of prayer clause "B" and "C-2".

(ii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE