

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 46 OF 2021**

Gohar Ali Hyder Ali Khan @ Firoz Haider

Ali and anr.

... Applicants

V/s.

The State of Maharashtra and anr.

... Respondents

Mr. Gautam T. Kanchanpurkar for the Applicants.

Mrs. S.D. Shinde, APP for the Respondent No.1/State.

Mr. Ramdas A. Shelke for the Respondent No.2

**CORAM : NITIN JAMDAR &
 N.R. BORKAR, JJ.**

DATE : 26 AUGUST 2022.

P.C.

. The present application under Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No. 408 of 2018 (hereinafter referred to as “FIR”, for short) dated 25 November 2018 registered at Vikhroli Police Station, Mumbai against the Applicants for the offences punishable under Sections 354, 354 (A) read with 34 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO) and the Special (POCSO) Case No.73 of 2019 pending on the file of learned Special Judge, Mumbai arising out of the said FIR.

2. The aforesaid crime came to be registered at the instance of

Respondent No.2/Complainant. According to the Respondent No.2, after demise of her parents in the year 2015, she and her brother started residing with the Applicants, who are her maternal uncles. The Respondent No. 2 has alleged that during the period from January 2015 to October 2018 the present Applicants on multiple occasions touched her body parts inappropriately and thereby outraged her modesty.

3. The learned Counsel for the Applicants and the learned Counsel for the Respondent No.2 jointly submit that the parties have amicably settled the dispute. It is submitted that the FIR in question came to be lodged due to some misunderstanding. It is submitted that no purpose would be served by keeping the prosecution alive, in view of the settlement arrived at between the parties. The learned Counsel for the parties submit that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Narinder Singh and ors vs. State of Punjab and anr*¹.

4. The Respondent No.2 has filed consent affidavit dated 15 November 2021. Respondent No.2 has stated that she lodged the FIR due to some misunderstanding as she was annoyed with the Applicants as they used to scold her and interfere in her personal matters. The Respondent No.2 has stated that she has no objection

¹ (2014) 6 SCC 466

if the FIR in question is quashed. In addition to it, we have interacted with the Respondent No. 2 in our chamber. She reiterated that she lodged the FIR in question as she was annoyed with the Applicants due to their constant interference in her personal life.

5. The Hon'ble Supreme Court in *Narinder Singh (supra)* has held :

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

While exercising the power the High Court is to form an

opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.”

6. We have examined the facts of the present case in the light of principles laid down by the Hon'ble Supreme Court in *Narinder Singh's* case. Admittedly, the parties are relatives. It appears that during the relevant period the Applicants were looking after the educational and other expenses of the Respondent No. 2. The Applicants to show that they still do care for the welfare of Respondent No. 2 have invested Rs. 300000/- in FDR towards her

marriage expenses. In view of the settlement, the Respondent No.2 is not going to support the prosecution case and therefore, possibility of conviction is remote and bleak. Nothing fruitful will therefore, come out of the prosecution in question. Considering these facts and circumstances, in our view, the application deserves to be allowed. The Criminal Application is thus allowed in terms of prayer clause (b) and (c), which read thus:

“b) To quash and set aside the Crime bearing F.I.R. No.I-408 of 2018 dated 25/11/2018 registered with the Vikhroli Police Station against the applicants;

c) To quash and set aside the Special POCSO Case No.73 of 2019 on the file of Learned Sessions (Special Pocso) Judge, Mumbai against the applicants:

7. Criminal Application is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)