

Digitally
signed by
KANCHAN
PRASHANT
DHURI
Date:
2022.08.17
18:38:42
+0500

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1438 OF 2019**

Usman Khaja Moinuddin Qureshi
and others ... Applicants/Petitioners
V/s.
The State of Maharashtra and anr. ... Respondents

Ms. Shabnam Shaikh for the Petitioners/Applicants.
Mr. K.V. Saste, APP for Respondent Nos.1 and 3/State
Ms Asha Joshi i/b Mr. Anil Y. Bansode for the Respondent No.2.

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

DATE : 12 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.598 of 2019 (hereinafter referred to as "FIR", for short) dated 29 July 2019 registered at Sakinaka Police Station, Mumbai for the offence punishable under Sections 354 (B), 323 and 504 read with 34 of Indian Penal Code and the criminal case bearing C.C. No.2610/2021 pending on the file of learned Metropolitan Magistrate, 66th Court at Andheri arising out of said FIR.

2. The aforesaid crime came to be registered, at the instance of Respondent No.2, who has *inter alia* alleged that on 29 July 2019 at about 20.30 hrs., the Applicant Nos.1 to 3, who are her father-in-law, mother-in-law and brother-in-law respectively, assaulted as well as outraged her modesty as she refused to pay the amount borrowed by her husband from third parties.

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 which was primarily matrimonial dispute. 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 the consent affidavits dated 23 June 2022 on record. The Respondent No.2 has stated that she has entered into Memorandum of Understanding (Deed of Khulanama) with her husband Ahmed Usman Qureshi to dissolve their marriage. Respondent No.2 has filed further affidavit dated 27 July 2022 wherein she has stated that she has received Rs.10,00,000/- from her husband towards permanent alimony. Respondent No.2 has stated

¹ (2014) 6 SCC 466

that she has no objection if the FIR in question is quashed in view of the settlement arrived at between the parties.

5. The Hon'ble Supreme Court in *Narinder Singh and ors vs. State of Punjab and another*² 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.

² (2014) 6 SCC 466

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 the case of *Narinder Singh (surpa)*. The main reason for filing of the FIR appears to be matrimonial dispute. In view of the settlement between the parties, Respondent No.2 is not going to support the prosecution case and therefore, possibility of conviction is remote and bleak. Apart from it, if the criminal case in question is not

quashed, the settlement arrived at between the parties would be disrupted. Considering these facts and circumstances, the application deserves to be allowed. Criminal Application is accordingly allowed in terms of prayer clause (c) which reads thus:

“(c) That this Hon’ble Court be further pleased to quash the C.R. No.598/2019 registered with Sakinaka Police Station at Mumbai on dated 29/07/2019 u/s. 323, 354B, 504 r.w 34 of the Indian Penal Code and C.C. No.2610/2021 pending before Metropolitan Magistrate 66th Court at Andheri.”

7. Criminal Application is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)