

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

CRIMINAL APPLICATION NO.229 OF 2022

SHAIKH SHAIKAT S/O. MAJIT @ MAJID PATEL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A.H.M. Vakil, Advocate for the Applicants.
Mr. A.R. Kale, APP, for the Respondent – State.
Mr. W.A. Shaikh, Advocate for the Respondent No. 2.

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**CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ**

DATE : JANUARY 18, 2023

PER COURT :

1. With consent, heard finally at the stage of admission.

2. By this Application under Section 482 of the Code of Criminal Procedure, the Applicants have sought to quash the criminal proceedings bearing R.C.C. No. 50/2021 emanating from the first information report bearing C.R. No. 280/2017, dated 07.11.2017 registered at Phulambri Police Station for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the first information report lodged by the Respondent

No. 2 against her husband and his parents being the Applicant Nos. 1 to 3 respectively. The marriage of the Applicant no.1 and the Respondent no. 2 was solemnized on 31.05.2014. There was rift in the matrimonial ties between the Respondent No. 2 and the Applicant No.1, which led to filing of the first information report. In the FIR, the Respondent No. 2 has alleged that the Applicants demanded dowry of Rs. 5,00,000/- and that they subjected her to physical and mental cruelty for not meeting the unlawful demand. She claims that she left her matrimonial home due to the ill-treatment meted out to her. Based on these allegations, the aforesaid crime came to be registered.

4. The crime was investigated and the charge-sheet came to be filed. The charge was framed and the applicants herein pleaded not guilty and claimed to be tried. Upon considering the evidence adduced by the prosecution, by judgement dated 01.03.2021, learned Magistrate held the Applicants guilty of offences punishable under Sections 498-A, 323 read with Section 34 of the Indian Penal Code and sentenced them to undergo simple imprisonment of 6 month and fine of Rs.

2,000/- each, in default to suffer one month simple imprisonment for offences punishable under Section 498-A read with 34 of IPC and to suffer simple imprisonment of 3 month each and fine of Rs. 500/- each, in default to suffer fifteen days simple imprisonment for offence under Section 323 read with 34 IPC. Being aggrieved by the said conviction and sentence, the Applicants preferred Criminal Appeal No. 20/2021 before learned District and Sessions Judge, Aurangabad, which is pending hearing.

5. Learned Counsel for the Applicants and learned Counsel for Respondent No. 2 state that during the pendency of the Appeal, the parties have settled the dispute amicably. It is stated that by way of Khula the Applicant No. 1 and Respondent No. 2 have separated. As per consent terms, the Respondent No. 2 has been paid Rs. 3,25,000/- along with Meher amount.

6. The parties have invoked the jurisdiction of this Court under Section 482 Cr.P.C post-conviction and during the pendency of the appeal. It may be mention that in the case of Ramawatar Vs. State of Madhya Pradesh reported in 2021 SCC OnLine SC 966, one of the

questions before the Hon'ble Supreme Court was whether the jurisdiction of Supreme Court under Article 142 of the Constitution of India can be invoked for quashing the criminal proceedings arising out of a 'non-compoundable offence'. While answering the said question, the Hon'ble the Supreme Court has observed thus:

10. So far as the first question is concerned, it would be ad rem to outrightly refer to the recent decision of this Court in the case of Ramgopal & Anr v. The State of Madhya Pradesh⁵, wherein, a two Judge Bench of this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J) was confronted with an identical question. Answering in the affirmative, it has been clarified that the jurisdiction of a Court under Section 320 Cr.P.C cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482 Cr.P.C. It was further held that the touchstone for exercising the extra-ordinary powers under Article 142 or Section 482 Cr.P.C., would be to do complete justice. Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers.

11. The Court in Ramgopal (Supra) further postulated that criminal proceedings

involving non-heinous offences or offences which are predominantly of a private nature, could be set aside at any stage of the proceedings, including at the appellate level. The Court, however, being conscious of the fact that unscrupulous offenders may attempt to escape their criminal liabilities by securing a compromise through brute force, threats, bribes, or other such unethical and illegal means, cautioned that in cases where a settlement is struck post-conviction, the Courts should, inter-alia, carefully examine the fashion in which the compromise has been arrived at, as well as, the conduct of the accused before and after the incident in question. While concluding, the Court also formulated certain guidelines and held:

"19... Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."
[Emphasis Applied]

13. We, however, put a further caveat that the powers under Article 142 or under Section 482 Cr.P.C., are exercisable in post-conviction matters only where an appeal is pending before one or the other Judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her legal remedies and the finality is sub-judice before an appellate court. The pendency of legal proceedings, be that may before the final Court, is sine-qua-non to

involve the superior court's plenary powers to do complete justice. Conversely, where a settlement has ensued post the attainment of all legal remedies, the annulment of proceedings on the basis of a compromise would be impermissible. Such an embargo is necessitated to prevent the accused from gaining an indefinite leverage, for such a settlement/compromise will always be loaded with lurking suspicion about its bona fide. We have already clarified that the purpose of these extra-ordinary powers is not to incentivise any hollow-hearted agreements between the accused and the victim but to do complete justice by effecting genuine settlement(s).

7. From a plain reading of this judgement, it is clear that powers under Section 482 of Cr.P.C can be exercised in post conviction matters when an appeal is pending before one or the other judicial forum. In the instant case, as noted above, it is stated that the appeal filed by the Applicants is pending before the Sessions Court, Aurangabad. Hence, there is no embargo in exercising power under Section 482 of Cr.P.C to quash present proceedings at post conviction stage, particularly considering the fact that the proceedings are emanating from the matrimonial dispute.

8. The Respondent No. 2 is present before the Court. She confirms that she and the Applicant No. 1 have separated by way of Khula. She has further

admitted having received Rs. 3,25,000/- along with Meher from the Applicant No. 1. She has given no objection to quash the proceedings. It is stated that the Applicants have no other criminal antecedents. We are satisfied that the settlement is voluntary and genuine.

9. Considering the nature of accusations and particularly that the parties have now decided to put an end to their strained relationship and move on with life, we are of the view that this is a fit case to exercise inherent power of this Court under Section 482 of Cr.P.C. to secure the ends of justice. Under the circumstances, the Application is allowed in terms of prayer clause 'B'. Consequently, the criminal proceedings bearing R.C.C. No. 50/2021 & the first information report bearing C.R. No. 280/2017, dated 07.11.2017 registered with Phulambri Police Station for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, are hereby quashed and set aside *qua* the present Applicants.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)