

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

CRIMINAL APPLICATION NO.304 OF 2021

PRADIP RAGHUNATH DAUD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicant : Shri Raut Ashok D.
APP for Respondent 1 : Shri S.J. Salgare
Advocate for Respondent 2 : Shri S.P. Koli

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 18th March, 2021

Oral Order:-

1. By this Criminal Application, the applicant has put forth prayer clause B as under :-

“B. By issuance of writ of certiorari, or any other writ, order or direction in the same nature, First Information Report No./ C.R. No.22/2019, dated 16.01.2019 registered with the Chawani Police Station, Chawani, Tal. Chawani, Tal and District Aurangabad, registered under Section 354, 509 of Indian Penal Code, 1960 and RCC No.977/2019 State of Maharashtra vs. Pradip Raghunath Daund, pending before the 27th - 4th Court of JMFC Court at Aurangabad, may kindly be quashed and set aside.”

2. We are not mentioning the name of the informant and the name of the educational institution in this order, for obvious reasons.

3. The learned advocate for the applicant submits, on

instructions, that respondent No.2/ original informant is agreeable to settle the dispute with him and she has entered her compromise undertaking dated 27.01.2021 at page 60 in the paper book. He submits that the informant has realized that she had filed the complaint against the applicant under a misunderstanding. Her misunderstanding has been cleared and she does not desire to prosecute her complaint. Reliance is placed on the judgment delivered by the learned Full Bench of the Punjab and Haryana High Court in the matter of ***Kulwinder Singh and others vs. State of Punjab and another, 2017 Cri.L. J. 2161.***

4. The learned advocate for respondent No.2/ informant submits that she has filed an affidavit in reply dated 04.02.2021. She is a married lady, who is an Assistant Teacher in the same educational institution in which, the applicant also serves as an Assistant Teacher. In the said affidavit, she submits that there was some confusion and misunderstanding between her and the applicant. The academic atmosphere in the school and other co-teachers is spoilt since she has filed the FIR. She has also stated in paragraph 4 that “*We both assured that in future we will not filed any criminal complaint against each other. The compromise letter on dated 27.01.2021 was signed by me without any coercion and undue influence.*”

5. In the case of ***Kulwinder Singh*** (supra), the learned Full Bench of the Punjab and Haryana High Court has noted in paragraphs 27

to 33 as under :-

- “27. *To conclude, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., "to prevent abuse of the process of any Court" or "to secure the ends of justice".*
28. *In Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and others (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:-*
“The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion.”
29. *The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.*
30. *No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.*
31. *The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up*

- during the course of a litigation.*
32. *The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of this Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.*
33. *The power under Section 482 of the Cr.P.C. is to be exercised ex debito justitiae to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.”*

6. We are, therefore, faced with the case involving such set of circumstances wherein, a male teacher (applicant) has been stalking a married female teacher (informant). Even during the schooling hours, the applicant used to wink at her and chase her. She was a constant attraction for him and he was busy moving behind her even in the presence of other

male and female co-teachers. The incident cited in the FIR is of the applicant having offered a film ticket to the informant and having invited her to accompany him to the theater. When the informant screamed at him in anger in full public view, he held her hand in the presence of male and female co-teachers indicating that he could drag her to the theater.

7. When the learned advocate representing the informant was addressing us, we could see his discomfort. We can also gather from the reproduced portion of paragraph 4 of her affidavit, that the informant may have been compelled to file an affidavit and tender a compromise undertaking since she states in the affidavit that “she assures that in future she will not file a criminal complaint against the applicant”. This speaks volumes about the pressure possibly exerted on her, either by the applicant or the educational institution. In fact, we would have appreciated if the educational institution would have taken recourse to the Vishaka Committee recommendations and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which is based on the judgment of the Honourable Supreme Court in the matter of *Vishaka and others vs. State of Rajasthan and others, (1997) 6 SCC 241*, so as to initiate disciplinary action against him.

8. We are also aware that in every employment establishment, be it the industrial sector or the educational institutions, public or private sector, etc., the Vishaka Committee recommendations are the mandate of

the Honourable Supreme Court and female employees in places of employment have to be given adequate protection so as to encourage them to take up employment. The involvement of lady employees has to be encouraged in order to bring them in the main stream along with their male counterparts and become a source of earning for the family. This object would be defeated if lady employees, who have complained against male employees, are coerced to withdraw their complaints so as to “sweep the dirt below the carpet”. We find it unconscionable to accept such compromise as it would surely not be in the interest of justice and would be counter productive.

9. In *Kulwinder Singh* (supra), the learned Full Bench has referred to the observations of Late Shri Justice Krishna Iyer in *Mrs. Shakuntala Sawhney v. Mrs. Kaushalya Sawhney and others (1980) 1 SCC 63* and has held that in disputes having their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and such other matters, the High Court can exercise its powers under Section 482 of the Code of Criminal Procedure, 1973.

10. In *Gian Singh vs. State of Punjab and another, (2012) 10 SCC 303*, the Honourable Supreme Court has observed in paragraphs 56, 57 and 58 as under :-

“56. *It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor*

proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided.

57. *Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.*
58. *Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction*

at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

11. Practically, in all matters under Section 482 of the Code of Criminal Procedure, 1973, the accused approaches the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court under Section 482, is invoked for seeking the quashing of the F.I.R..

12. In ***C.B.I. vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140***, the Honourable Supreme Court has held in paragraph 22 that “*The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.*” It is observed that an

FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

13. In the *State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89*, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

14. In *Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench)*, the Honourable Supreme Court has observed thus:-

“It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice.”

15. In *Geeta Mehrotra and another vs. State of Uttar Pradesh and another*, (2012) 10 SCC 741, the Honourable Supreme Court has held that in the absence of any specific allegation and an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.

16. In *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another*, (2017) 9 SCC 641, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

- “(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
- (2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
- (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
- (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.
- (5) The decision as to whether a complaint or First

Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

- (6) *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*
- (7) *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.*
- (8) *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*
- (9) *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*
- (9) *There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

17. Insofar as the contents of the FIR are concerned, we clearly find that the informant has spelt out the offending acts of the applicant. The charge-sheet also contains the same allegations. Identical is her statement recorded under Section 164 of the Code of Criminal Procedure, 1973.

18. In view of the above, this Criminal Application, being devoid of merit is, therefore, dismissed.

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(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)