

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No.2028 of 2023 With IA/1/2023 (Compounding Application) <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. M.S. Dhapola, learned counsel for the applicant. Mr. V.K. Gemini, learned Deputy Advocate General for the State. Mr. Kamlesh Tiwari, learned counsel for respondent no.2. A proceeding of Complaint Case No.411 of 2023, "Maheshwari Devi Vs. Vijay Singh Fartyal and Others" stood adjudicated by the trial Court of Judicial Magistrate, Champawat by the judgment of 04.08.2023. As a consequence of the aforesaid judgment, the present applicant along with the other two co-accused persons have been acquitted for the offence under Section 504 of the IPC. But they have been convicted under Sections 323, 452 and 506 of the IPC and for which they have been imposed with a sentence of 6 months, 2 years and 6 months respectively along with respective fine. As against the judgment of conviction, an appeal has been preferred and the appeal is presently pending consideration. It is during the consideration of the

		appeal, that one of the convicts, the present applicant is said to have entered into a settlement with the complainant. Consequent to which, the present compounding application has been filed seeking composition of the offences. The compounding application is being vehemently opposed by the Government Advocate, apart from the ground, that embargo is created by Section 320(5) of the Cr.P.C., which may be a debatable issue, which may not be required to be gone into at this stage. This Court is slightly apprehensive to accept the compounding application, for the reason being, that:- 1) The two other convicts, who are under an appeal against the judgment of conviction, are not before this Court. 2) The compounding application does not refer to any written settlement, which has been arrived at between the parties, which could be taken as to be a safe basis for composition of the offences. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Apex Court, as it has been rendered in Criminal Appeal No.1489 of 2012, "Ramgopal & Anr. Vs. the State of Madhya Pradesh", which was decided along with another Criminal Appeal
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		No.1488 of 2012, “Krishnappa & Ors. Vs. State of Karnataka”, wherein the Hon’ble Apex Court has considered the aspect as to under what circumstances the proceedings to be compounded at the stage when the appeal itself is pending consideration. The wider principle has been laid down by the Hon’ble Apex Court in paragraph no.22 of the said judgment observing therein, that once there is a judgment of conviction and, if the matter is to be compounded during the pendency of an appeal, there has to be laid down a formal terms of settlement, which has to be placed by the parties before the Court for the purpose of composition of offences. That is why the Hon’ble Apex Court has drawn an exception, that the applicant and the complainant were directed to appear before the trial Court concerned and file their written settlement. If they do so in that case within the prescribed time period of the judgment of the Hon’ble Apex Court, the Chief Judicial Magistrate concerned was directed to submit his report before the Appellate Court in order to satisfy itself about the genuineness of the compromise, for the purposes to invoke the provisions contained under Section 320 of the Cr.P.C. The relevant paragraph no.22 of the said judgment is extracted hereunder:-
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“22. In so far as this appeal is concerned, we note that even though the Learned Counsel(s) for the Appellants and the Complainant-victim have jointly stated before this Court that the parties have settled their dispute(s), but no formal settlement has either been brought on record nor has it been even clarified that such a deed of settlement has been recorded. Admittedly, the factum of compromise/settlement between the parties has been raised for the first time before this Court. In the absence of any proof of settlement, we find ourselves hard-pressed to take cognizance of the asseverated compromise. We, therefore, direct both the Appellants as well as the complainant-victim to appear before the Chief Judicial Magistrate, Shimoga and submit their settlement, if any, in writing within a period of three months. The C.J.M. shall send a Report to this Court immediately, recording his satisfaction with regard to the genuineness of the compromise. In the event, the said Report would reflect a bona-fide settlement between the parties, the present appeal shall also be deemed to have been disposed of in same terms as Criminal Appeal No. 1489 of 2012, referred to above. Further, the incontrovertible corollary in such event would be that the Appellants shall be treated to have been acquitted of all the charged offences for all intents and purposes. On the other hand, if no formal settlement is placed before C.J.M., Shimoga within the stipulated period or the Report reflects to the contrary, the criminal appeal shall stand as dismissed as no other substantial question of law is raised or involved in this appeal.”

In view of the aforesaid dictum of the Hon'ble Apex Court, this C482 Application would stand disposed of with the liberty left open to the convicts and the complainant to file a written formal settlement before the trial Court for its verification and to scrutinize its genuineness and upon the satisfaction being recorded by the learned trial Court i.e. the Court of Judicial Magistrate, he would be referring the matter before the Appellate Court for the purpose of exercising its powers under

			Section 320 of the Cr.P.C. for compounding of the offences. In view of the aforesaid principle laid down by the Hon'ble Apex Court, the matter is relegated back, subject to the aforesaid observations and restrictions, as it has been imposed by paragraph no.22 of the judgment of Ramgopal & Anr (<i>supra</i>) as extracted above, the C482 Application would stand disposed of. (Sharad Kumar Sharma, J.) 19.10.2023 Sukhbant
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