

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

CRIMINAL APPLICATION NO.5427 OF 2014

Natthusing Shamsing Chungade and another .. Applicants

Versus

The State of Maharashtra

.. Respondent

Mr.R.A.Jaiswal h/f Mr.N.S. Ghanekar, Advocate for the applicants.

Mr.U.S.Mote, APP for the sole respondent/State.

CORAM : SMT.SADHANA S. JADHAV, J.

DATED : 15.04.2015

PER COURT :-

1. Applicant No.1 herein is convicted for the offence punishable under Section 326 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and fine of Rs.3,000/- (Rupees Three Thousand), in default, simple imprisonment for three months, by the learned Judicial Magistrate, First Class, Sillod, in RCC No.23 of 2007, vide judgment and order dated 23.09.2010. The applicant No.2 happens to be the original complainant in RCC No.23 of 2007.

2. Being aggrieved by the said judgment and order the applicant No. 1 filed Criminal Appeal No.222 of 2010 before the Sessions Court, Aurangabad. During the pendency of the appeal the complainant had shown his willingness to forgive the accused for the offence committed. The parties have compounded the offence outside the Court. Hence the parties to the petition filed a settlement deed before the Sessions Court. On 24.03.2015 the applicant had filed an application seeking permission to compound the offence pursuant the order dated 17.03.2015 passed by this Court (**Coram:** Smt.Sadhana S.Jadhav, J.). Learned Sessions Judge has considered the said application and has arrived at conclusion that the offence under Section 326 was made out against the accused and in view of the fact that Section 326 of the Indian Penal Code is not a compoundable offence learned Sessions Court vide order dated 06.04.2015 rejected the application .

3. The parties to the pursuant petition had filed a joint pursis. The petitioner herein had specifically contended as follows:

“That in the present case no offence under Section 326 of Indian Penal Code could be made out against the present applicant as injuries are simple in

nature so at the most offence under Section 324 of the Indian Penal Code could be attracted and Section 324 of the Indian Penal Code is compoundable offence. That party no. 1 and 2 are not having any enmity".

4. The learned counsel for the applicant no. 1 submits that the parties to the present application are cousins interse and in order to maintain peace and harmony in the society as well as cordial relations in both the families, the parties to the application have decided to compound the offence.

5. The learned Magistrate while convicting the applicant No. 1 for the offence punishable under Section 326 of the Indian Penal Code had observed that the evidence of the informant is duly corroborated by the medical evidence of P.W.6 Dr. Farhina Tabassom wherein she has deposed that on 15.12.2006 at about 11.30 p.m. on receiving memo of Exh.32 informant had examined by her. On his physical examination she found lacerated wound at his ear lobule of 3 x 1 c.m. in size caused by teeth bite and as per the opinion of medical officer, this injury which resulted into permanent disfiguration of face, was a grievous one. The Medical Officer specifically opined that the injury was possible by human bite and not by animal bite as contended by the accused.

6. In view of the fact that the applicant No. 2 has decided to forgive the applicant No. 1, this Court is of the opinion that the medical evidence cannot be ignored. Hence it is held that the offence punishable under Section 324 is proved by the prosecution. At this stage, the learned counsel Shri Kayyum Nazir Shaikh is representing the applicant No.2 and has duly identified applicant No.2, who happens to be original complainant in RCC No.23 of 2007. Section 324 of the Indian Penal Code is a compoundable offence with the permission of the Court. Hence, this court is inclined to grant permission. The affidavit is taken on record and marked as '**Article-X**' for the purpose of identification. Joint pursis submitted by the applicant is hereby accepted.

7. The conviction of applicant no. 1 for the offence punishable under Section 326 of the Indian Penal Code as recorded by the Judicial Magistrate, First Class, Sillod, vide judgment and order dated 23.09.2010, is hereby quashed and set aside. The prosecution has proved that the applicants have committed offence under Section 324 read with 34 of the Indian Penal Code.

8. Learned counsel for the applicants submits that the applicant was in jail for a period of one month

during the course of investigation and trial. That Section 324 of the Indian Penal Code is compoundable offence. The composition of an offence amounts to acquittal. Hence, the applicants are acquitted for the offence punishable under Section 324 read with 34 of the Indian Penal Code. Bail bonds stand canceled. Fine amount if paid be refunded. Since the parties have compounded the offence, no specific orders are necessary in respect of Clause (4) of the operative order passed by learned Judicial Magistrate First Class, vide judgment and order dated 23.09.2010.

[SMT. SADHANA S. JADHAV, J.]