

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

CRIMINAL APPLICATION NO. 5497 OF 2012

Dattatraya S/o Shrirangrao Kadam,
Aged – 53 years, Occu. Govt. Service,
R/o Dattanagar, Parbhani,
Dist. Parbhani.

...Applicant
(Ori. Complainant)

versus

1. Khalil A. Chaudhary,
Age Major years, Occu. Main Editor,
K.C. Printers, Chaudhary Manzil,
Old Mondha, Aurangabad.

2. Mohasin Khan S/o Sikandar Khan,
Age-39 years, Occu. Journalist,
District Representative,
R/o Yusuf Colony, Parbhani,
Dist. Parbhani.

...Respondents
(Ori. Accused)

.....

Mr. M.P. Tripathi, Advocate for Applicant

Mr. D.D. Choudhary, Advocate for respondents No. 1 and 2

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CORAM : A.I.S. CHEEMA, J.

DATED : 12th MARCH, 2015

Order :-

1. Heard learned counsel for applicant – original complainant as well as learned counsel for respondents No. 1 and 2 - original accused.

2. In the summary case, respondent No. 2- Mohasin Khan S/o Sikandar Khan was acquitted, while Judicial Magistrate First Class stopped the proceedings regarding respondent No. 1 – Khalil A. Chaudhary under Section 258 of the Code of Criminal Procedure, 1973. Order under Section 258 of Code of Criminal Procedure has effect of discharge, looking to the wordings of Section itself. However, Section 258 of Code of Criminal Procedure does not apply to the complaint cases and trial Court appears to have wrongly invoked Section 258 of Cr.P.C.

3. Learned counsel for the applicant seeks permission to withdraw the application against respondent No. 1 Khalil A. Chaudhary with liberty to avail appropriate remedy. Liberty is granted.

4. The application as regards respondent No. 1 Khalil A. Chaudhary is treated as withdrawn with liberty as sought. Cause title be corrected accordingly.

5. As regards respondent No. 2 – Mohasin Khan Sikandar Khan, there is material available to grant leave. There is arguable case.

. As such, leave is granted against respondent No. 2 - Mohasin Khan Sikandar Khan.

. Application be converted in to appeal against respondent No. 2 -Mohasin Khan Sikandar Khan.

. **Appeal is Admitted** against respondent No. 2 -Mohasin Khan Sikandar Khan.

. Paper-book be got prepared.

. Action under Section 390 of the Code of Criminal Procedure be taken against respondent No. 2- Mohasin Khan Sikandar Khan in the trial Court and brief compliance report be called.

6. Mr. Choudhary, learned counsel dispenses with notice on behalf of respondent No. 2 - Mohasin Khan Sikandar Khan, after admission of the appeal.

Sd/-

(A.I.S. CHEEMA, J.)