

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

CRIMINAL APPLICATION NO. 6649 OF 2015

Samadhan S/o Rama Lokhande .. Applicant

Versus

The State of Maharashtra
and Another .. Respondents

Shri A. R. Devkate, Advocate h/f Mr. Swapnil D. Tawshikar,
Advocate for the Applicant.

Shri D. R. Kale, A. P. P. for the Respondent No. 1.

Shri V. Y. Patil, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 22ND DECEMBER, 2015.**

PER COURT :-

1. The present applicant is prosecuted and convicted for the offences punishable under Sections 452 and 354 of Indian Penal Code. The applicant is sentenced to suffer rigorous imprisonment for 3 months for the offence punishable under Section 452, for offence punishable under Section 354 the applicant is sentenced to suffer rigorous imprisonment for 3 months and to pay fine of Rs. 20,000/-. The applicant has filed the appeal which is pending.

2. Mr. Devkate, the learned counsel submits that, in fact, when the matter was pending with the Magistrate, the respondent No. 2 and the present applicant filed an application for compounding the same which was not considered. The Appellate Court is also not empowered to compound the offences and that is why the present application is filed.

3. The Magistrate certainly could not have compounded the offences as both the offences are not compoundable. Even, the Sessions Judge would not have authority to compound the same.

4. The applicant is already convicted for both the offences. As is held by the Apex Court in a case of **Narinder Singh and Others V/s. State of Panjab and Another** reported in **(2014) 6 S.C.C. 466**, the Court can exercise its power under Section 482 of the Criminal Procedure Code, even, to entertain the applications for compounding in respect of the offences which are not compoundable. Of course, the same is not permissible in heinous offences, such as, offences punishable under Sections 302, 376 etc.

5. The offence in this present case is punishable under Section 354 and 452 of Indian penal Code. The applicant is sentenced to suffer rigorous imprisonment for 3 months and to pay a fine of Rs. 20,000/- for the offence punishable under Section 354. It is submitted that, the fine amount is already deposited by the applicant. As far as, offence punishable under Section 452 is concerned the punishment is imprisonment up to 7 years.

6. In light of that, the accused after having been convicted will have to undergo imprisonment. Considering the fact that the matter has been settled between the parties so as to maintain cordial relations and to avoid disharmony. Even the affidavit is filed by the respondent No. 2 which is verified by the Registrar (Judicial). Considering the said aspect we would reduce the sentence awarded for an offence punishable under Section 452 with a sentence till rising of the Court and for an offence punishable under Section 354 we would restrict the punishment to

the extent of fine as the said offence is punishable either with imprisonment or fine or both. The said recourse would be in conformity with the judgment of the Apex Court in a case of, **Devidas Suryawanshi and Others V/s. State of Maharashtra in Criminal Appeal No. 463 of 2010.**

7. In light of the above, we pass the following order -

I] The conviction awarded by the Judicial Magistrate First Class to the present applicant of suffering rigorous imprisonment for 3 months for the offence punishable under Section 354 and to pay fine of Rs. 20,000/- is set aside to the extent of suffering rigorous imprisonment for 3 months and is confirmed to the extent of payment of fine of Rs.20,000/-.

II] The sentence of suffering rigorous imprisonment for 3 months for the offence punishable under Section 452 of Indian Penal Code is set aside and reduced and the petitioner is punished till rising of the Court and to pay fine of Rs. 10,000/- to be paid by the applicant. The judgment of the Magistrate is set aside and stands modified as above.

III] The amount of fine is directed to be paid to the respondent No. 2 as a compensation.

IV] In view of the above, the criminal application stands disposed of.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]