

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 843 OF 2015

Shri Uday @ Lala Vasantao Shah. ... Applicant.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Padmanabh D. Pise, advocate for applicant.

Ms. G.P. Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 2, 2015

P.C.:

1 Heard the learned Counsel for the Applicant and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The applicant herein happens to be the original Accused in
R.C.C. No. 270 of 2006. The Judicial Magistrate First Class, Miraj by

Judgment and Order dated 17/2/2012 was pleased to convict the Applicant for an offence punishable under Section 326 of the Indian Penal Code and has sentenced him to suffer R.I. for 3 years and fine of Rs. 2,000/- I.d. to suffer S.I. for two months.

4 Being aggrieved by the said Judgment and Order, the applicant herein had filed criminal appeal No. 78 of 2012 before the Session Judge, Sangli. During the pendency of the said appeal, the parties had arrived at an amicable settlement. The complainant had agreed to forgive the Applicant. That it was a dispute between two parties. Since the parties had arrived at an amicable settlement, the Applicant herein has filed an application before the Appellate Court seeking permission to compound the offence. The said application was also signed by the original complainant i.e. Girish Gangadhar Shindgi and Omkar Dinesh Kokane. It was specifically averred that the injured had no more grievance against the Applicant. The said application is pending since 26/8/2013. On the same day, the appellant had also filed a purshis that to maintain harmony in society and cordial relations between both the parties, the learned Court was requested

to allow the application seeking composition of the offence. The said application is still pending.

5 It is true that Section 326 of the Indian Penal Code is a non-compoundable offence and therefore, it is not included in the list annexed in Section 320 of the Code of Criminal Procedure. In the case of **Yogendra Yadav & ors. v/s. State of Jharkhand & anr.** reported in (2014) 9 SCC 653, the Hon'ble Apex Court has held that-

“Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed. However, in a given case, the High Court can quash a criminal proceedings in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case.”

6 The Learned Counsel for the Petitioner has also placed reliance upon the Judgment in the Hon'ble Apex Court in the case of **Rajeevan & Anr. v/s. State of Kerala & ors. 2014 All MR (Cri.) 4188**. In that case, the accused was convicted for offence punishable under Section 323, 354, 447 of the Indian Penal Code. Subsequently there was compromise. The Hon'ble Apex Court has held that wherever the dispute between the two parties or two groups does not affect peace and tranquility in the society, the accused and the complainant can be granted permission to compound the offence with the permission of the Court, although it is not compoundable under Section 320 of the Code of Criminal Procedure, 1973.

7 In the present case, the learned Magistrate has observed that the prosecution has proved that the accused has voluntarily caused grievous hurt by dangerous weapon to informant. In the case of **Dasan v/s. State of Kerala & anr. reported in (2014) 12 SCC 666**, the Hon'ble Apex Court had relied upon the Judgment of the Apex Court in the case of **Gian Singh V/s. State of Punjab reported in (2012) 10 SCC 303**, wherein it was held that -

“Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional Court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.”

8 In the present case also, during the pendency of the appeal, the parties have amicably settled the dispute and had filed an application. In the given circumstances, the petitioner has made a prayer that the Session Court be directed to decide the application. It would not be appropriate for this Court to quash the proceedings in view of the compromise arrived at between the parties when an application seeking the same relief is pending for consideration since 26/8/2013. The learned Appellate Court shall appreciate that in any case charge was framed against the accused under Section 325 and 326 of the

Indian Penal Code. The Judicial Magistrate First Class has not considered the charge under Section 325 of the Indian Penal Code. The Appellate Court shall appreciate the facts of the case. It prima facie appears that an offence under Section 325 of the Indian Penal Code is made out. In that eventuality, section 325 of the Indian Penal Code is compoundable offence and this aspect be considered by the learned Sessions Judge while deciding the application seeking permission to compound the offence.

9 In view of the above observations, the application deserves to be allowed.

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The matter is remanded to the Court of District and Sessions at Sangli.
- (iii) The learned Sessions Court shall consider the the Judgments relied upon by the Applicant in the above observations and decide the

applications filed by the complainant and the accused in accordance with the law having reference to the Judgment of the Hon'ble Apex Court.

(iv) The learned Sessions Judge is directed to decide the said application seeking composition of the offence within 6 weeks from the date of receipt of this order. The learned Sessions Court shall decide the application on its own merits without being influenced by the observations made by this Court.

11 Rule is made absolute in the above terms. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/order.