

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

CRIMINAL APPLICATION NO.3404 OF 2017

1. Wajahat Nawaz Khan S/o. Sadat Nawaz Khan
Age : 54 years, Occu : Advocate,
R/o. Sadat Manzir, Jaisingpura,
Dist. Aurangabad
2. Dr. Sujahat Nawaz Khan s/o Amir Nawaz Khan
Age : 70 years, Occu : Veterinary Doctor,
R/o. Yunus Colony, Dist. Aurangabad .. Applicants

VERSUS

The State of Maharashtra
Through Jawahar Nagar Police Station,
Aurangabad .. Respondent

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Advocate for the applicant : Shri B.R. Warma
APP for the respondent - State: Shri. S.W. Mundhe

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WITH

CRIMINAL REVISION APPLICATION NO.258 OF 2009

**CORAM : PR. BORA, J.
DATE : AUGUST 28, 2017**

PER COURT :

1. Heard the learned Advocate appearing for the applicant, the learned APP for the State and the original complainant who has appeared in-person. The original complainant has been identified by Advocate Shri B.R. Warma, who is appearing for the present applicant.

2. The applicant was convicted for the offences punishable under Section 379 and 420 of Indian Penal Code (hereinafter referred to as the 'I.P.C.') by 7th Judicial Magistrate, First Class Court at Aurangabad. The order of conviction and sentence has been confirmed in appeal by the Sessions Court. Present criminal application has been filed for compounding of offences, as there is an amicable settlement between the applicant and the original complainant. Affidavit of the original complainant is tendered across the bar. The same is taken on record and marked as Exh.'X'. In the affidavit, the deponent in para nos.2 and 3 has stated thus :

"2. I say and submit that, the accused/appellant Wajahat Khan is the son of deponent's elder brother namely Sadat Nawaz Khan S/o. Ameer Nawaz Khan, who died in the year 1988. The deponent has love and affection with accused/appellant because he is real nephew who is as good as his own son. It is observed that the accused/appellant is regularly and sincerely practicing as an advocate in Aurangabad District and Sessions Court. He had educated his children his two daughters are married and another daughter is student of BHMS III year. He had also sincerely looked after to his deceased mother.

In these circumstances, I do not want to proceed any legal matter against him for the offences which had taken place. Now I have pardoned him. I have no any grievance or complaint against him. In future also we the uncle and nephew shall not file any compliant against each other. I want to maintain co-

ordial relation without disturbing our old joint family relations.

3. The deponent further observed that, there is no complaint against the accused – appellant from this family and also from the public at large, therefore, the deponent being his real uncle, has pardoned accused – appellant, Wajahat Khan considering all the above mentioned facts, does not want to remain any conviction against him in the present case. The appellant – accused is like deponent's son, as such the deponent has no any complaint, grievance or dispute against the appellant – accused. Therefore it is earnestly prayed that, permission for compound offences may pleased be granted.”

3. While swearing the aforesaid affidavit, the deponent – complainant has been identified by Advocate Shri B.R. Warma, who is appearing for the applicant in the present matter. The learned APP was of the opinion that, when the complainant is appearing in person, he must appear through some counsel, who can identify him and cannot directly appear in the matter without being made party in the present proceeding or without summons or notice from the Court. I do understand the anxiety of the learned APP. However when the complainant has been identified by Advocate Shri Warma and when Advocate Shri Warma has stated before the Court that, the complainant is the same person and therefore, he has identified him before the Ld. Registrar while swearing the affidavit, it does not appear to me that, there is any further requirement that the original

complainant shall appear through Counsel.

4. The offences under section 379 and 420 of I.P.C., both are compoundable under section 320 of the Code of Criminal Procedure. The offence under section 379 of the I.P.C. can be compounded by the owner of the property stolen, whereas the offence under section 420 can be compounded by the person cheated, with the permission of the Court before which any prosecution for such offence is pending. Since the matter has reached upto High Court, section 320 (6) would be relevant, which reads thus :

*“320. Compounding of offences.-(1)
The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:-*

1.
2.
3.
4.
5.

6. A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.”

5. In view of the fact that, the prosecution was initiated on the

report lodged by the present respondent and he is the person whose property was stolen and who was cheated by the applicant, he is the competent person to compound both the said offences. Hence, Criminal Application No.3404 of 2017 deserves to be allowed and consequently the revision application will also have to be disposed of. Hence, I pass the following order.

ORDER

1. The Criminal Application No.3404 of 2017 is allowed.
2. The Judgment and order of conviction dated 02.05.2001 passed by 7th Judicial Magistrate, First Class, Aurangabad in R.C.C. No.122/2000 and the Judgment and order dated 26.08.2009 passed by the Additional Sessions Judge, Aurangabad in Criminal Appeal No.28/2001 stand quashed and set aside and the applicant is acquitted of offences under Section 379 and 420 of I.P.C.
3. The Revision application stands disposed of in the aforesaid terms.

(P.R. BORA, J)