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

***CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPLICATION NO.1187 OF 2017***

***WITH***

***CRIMINAL REVISION APPLICATION NO.514 OF 2016***

***(NOT ON BOARD)***

Dharmendra Krishna Patil

..Applicant.

V/s.

State of Maharashtra & Anr.

..Respondents.

Mr.Kuldeep Patil for the applicant.

Mr.S.S.Pednekar, APP for the respondent-State.

Ms.Megha Bajoria for respondent Nos.2, 3 & 4.

***CORAM: NITIN W.SAMBRE, J.***

***DATE : MARCH 14, 2018***

**PC.:-**

With the consent of the parties, heard both the matters.

2. The applicant is convicted by the Additional Sessions Judge, Raigad-Alibag in Criminal Appeal No.75/2010 vide judgment dated August 31, 2016 for offences punishable under section 452 and 323 of the Indian Penal Code.

3. In the above criminal application and revision, the said conviction is questioned on the ground that there is no sufficient evidence on record to convict the applicant-accused for the crime in question. In the application under section 482 of the Code of Criminal Procedure, a submission is made that even at this stage, if there is no conviction and challenge in the application / revision, this Court has no limitation to exercise powers under section 482 of the Code of Criminal Procedure whereby the order is questioned.

4. The complainant Pradip Gosavi Patil was made to enter the witness box before this Court, who has deposed that they have amicably settled the matter and as such, filed the consent terms for compounding the offence.

5. The applicant-accused is acquitted of the offence punishable under section 323 of the Indian Penal Code which is compoundable. Pursuant to the same, the order to the extent of conviction of the offence is set aside for an offence punishable under section 323 of the Indian Penal Code.

6. So far as offence punishable under section 452 of the

Indian Penal Code is concerned, the necessary ingredients speaks of house-trespass having made preparations to hurt, assault or wrongful restraint. The said offence is punishable with imprisonment for a period of seven years and fine. This Court assisted by the respective counsel proceeded to analyse the evidence of witnesses.

7. So far as the case of the prosecution is concerned, the same is based on evidence of nine witnesses. PW8 Dr. Nandkumar Bhosale who is examined in support of the injury certificate in categorical terms speaks of likelihood of injury being caused by weapon i.e. iron punch which is alleged to have been used by the accused persons.

8. PW4 Dinesh, the brother of the complainant does not speak of any use of weapon but only deposed about quarrel between the parties.

9. PW5 Gaurubai, the mother of the complainant has not supported the case of prosecution to support the claim that the accused had used weapon so as to cause any offence in question.

10. In the aforesaid background, a case of accused having committed house-trespass would fall under section 448 of the Indian Penal Code.

11. In the wake of above, in view of the consent extended by the complainant and the fact that offence punishable under 452 of the Indian Penal Code is not made out and the one punishable under section 448 of the Indian Penal Code is made out of house-trespass, it is ordered that the application / revision are allowed by ordering compounding of the offence after converting the offence punishable under section 452 of the Indian Penal Code into offence punishable under section 448 of the Indian Penal Code. As such, the conviction is set aside.

12. The applicant-accused has volunteered to pay costs of Rs.10,000/- to Kirtikar Bar Library within four weeks from today and file a receipt of the same with the Registry.

***(NITIN W.SAMBRE, J.)***