

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1743 OF 2020

Tanaji s/o. Govindrao Junne-Patil and Ors.**Applicants.**

Versus

The State of Maharashtra and Anr.**Respondents.**

Mr. U.B. Bilolikar, Advocate for applicants.

Mr. P.K. Lakhotiya, APP for respondent/State.

AND
CRIMINAL APPLICATION NO. 1745 OF 2020

Ananda s/o. Madhvrao Junne and Ors.**Applicants.**

Versus

The State of Maharashtra and Anr.**Respondents.**

Mr. G.P. Shinde, Advocate for applicants.

Mr. R.D. Sanap, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 14/10/2020.

ORDER :

1. The first proceeding is filed for challenging the order passed on Exh. 49 in Criminal Appeal No. 12/15 by learned Additional Sessions Judge, Kandhar, Link Court at Mukhed and the second proceeding is filed to challenge the order made on Exh. 61 which is from Criminal Appeal No. 14/2015 and which is pending in the same Court.

2. The submissions made and the record show that in respect of the incident dated 16.5.2009 two crimes were registered against two sides for offences punishable under sections 326, 324, 149 etc. of Indian Penal Code ('I.P.C.' for short). The applicants from first proceeding are convicted by J.M.F.C. in case bearing R.C.C. No. 129/2009 for the offences punishable under sections 326, 148, 149, 324 etc. of I.P.C. and in the second case in R.C.C. No. 115/2009 the same J.M.F.C. has convicted the applicants of the second proceeding for offences punishable under sections 323, 324, 506, 149 etc. of I.P.C. The applicants of the first proceeding have filed Criminal Appeal No. 12/2015 and in that appeal, the application at Exh. 49 was moved by present applicants/convicted accused and the informant of the case. It was submitted that the parties have settled the dispute and so, the matters may be disposed of as per the settlement. Indirectly, they wanted the decision of the appellate Court that due to settlement the conviction and sentences are set aside. Similar application was moved by the applicants of the second proceeding in Criminal Appeal No. 14/2015. Both these applications are rejected by the learned Additional Sessions Judge, Kandhar by observing that the offences punishable under sections 324 and 326 are non compoundable and so, such settlement cannot help the convicted persons.

3. The learned counsels for the applicants in both the proceedings placed reliance on observations made by the Apex Court in three cases of **the State of Madhya Pradesh Vs. Laxmi Narayan and Ors. [AIR 2019 SC 1296]**, **Mohd. Ibrahim Vs. State of Karnataka & Ors. [2019 ALL MR (Cri) 1279 (S.C.)]**, **Shankar and Ors. Vs. The State of Maharashtra and Anr. [2019 ALL MR (Cri) 3060 (S.C.)]** and observations made by this bench in the case of **Balchand and Ors. Vs. The State of Maharashtra and Ors. [2013 ALL MR (Cri) 4399]**. The facts of the reported cases and the case of this Court show that the applications were moved prior to conviction. The situation changes after conviction. If after conviction the parties settle the dispute and offences are non compoundable, the conviction cannot be set aside. Even this Court has no power under section 482 of Cr.P.C. to set aside the conviction due to such compromise as there is substantive appeal provided to challenge the decision of conviction. When such appeal is preferred, the compromise can be considered by the appellate Court and if different offence, compoundable offence is made out during argument, the circumstance of the settlement can be considered. Further, even if the parties are not able to make out the case that offence is compoundable, it is always open to the appellate Court to take a lenient view due to such settlement and accordingly, the sentence can be modified. This Court holds that this Court has no power to set aside the conviction by using the provision

of section 482 of Cr.P.C. and so the following order.

ORDER

Both the applications stand dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/