

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1120 OF 2021

1. Madhav S/o Govindrao Sathe,
Age 42 years, Occ. Agriculture,
R/o. Shivaji Nagar, Mukhed,
Taluka Mukhed, District Nanded.
2. Shvaji S/o Govindrao Sonkamble
Age 44 years, Occ. Agriculture,
R/o. Khatgaon, Taluka Mukhed,
District Nanded. ... Applicants

Versus

1. The State of Maharashtra,
Through Mukhed Police Station,
Taluka Mukhed, District Nanded.
2. Ashok S/o Shyamrao Davkare
Age 45 years, Occu. Service,
R/o. Zilla Parishad Water Supply
Department Ghansangavi,
Taluka Ghansangavi, District Jalna. ... Respondents

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Mr. P. R. Katneshwarkar, Advocate h/f Mr. V. R. Jain, Advocate for
the Applicants.

Mr. M. M. Nerlikar, APP for Respondent No.1-State.

Mr. S. A. Deshmukh, Advocate for Respondent No.2.

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CORAM : V. K. JADHAV AND

S. G. DIGE, JJ.

DATED : 9th JULY, 2021

JUDGMENT (PER V. K. JADHAV, J.) :-

1. By consent of the parties, heard finally.

2. This pertains to quashing of the criminal proceeding post-conviction for non-compoundable offence on settlement between the applicants-convicts and respondent no.2-informant.

3. Brief facts giving rise to the present criminal application are as follows:

a. Respondent no.2-informant is a public servant. On 13.05.2011 at about 13.00 hrs. in the office of Minor Irrigation, Mukhed, respondent no.2-complainant was busy with his official work. The applicants made a phone call to respondent no.2-complainant, however, he did not receive their phone call. Consequently, both the applicants went to his office and extended beating to him in the office itself. The respondent-informant sustained bleeding injury on his nose. He was rescued by the office staff. The respondent-informant was taken to the hospital. On the basis of the complaint lodged by the respondent-informant, crime no. 76 of 2011 came to be registered in the concerned police station and after completion of the investigation, charge-sheet came to be submitted before the court which is numbered as R.C.C. No. 104 of 2011. Both the accused persons were tried vide R.C.C. No. 104 of 2011 for the offence punishable under Sections 353,

332, 504 and 506(i) read with Section 34 of Indian Penal Code.

b. Learned Judicial Magistrate, First Class, Mukhed, District Nanded, by judgment and order dated 26.06.2013 in R.C.C. No. 104 of 2011, has convicted both the accused persons for the offence punishable under Sections 332 and 353 r/w 34 of IPC and sentenced them under Section 332 r/w 34 of IPC to suffer Rigorous Imprisonment for six months and to pay fine of Rs.2,000/- (Rupees Two Thousand only) each, in default to suffer Simple Imprisonment for one month. No separate sentence has been passed for the offence punishable under Section 353 r/w 34 of IPC.

c. Being aggrieved by the same, the applicants have preferred Criminal Appeal No. 12 of 2013 before the Sessions Court, Mukhed. The said criminal appeal is still pending before the Additional Sessions Judge, Mukhed. The applicants and respondent no.2-informant filed an application on 05.12.2018 below Exhibit 26 before the Additional Sessions Judge, Mukhed praying therein that the parties have arrived at an amicable settlement out of the court and thus, the applicants may be acquitted in view of the compromise. By order dated 12.03.2019 passed below Exhibit 26,

the learned Additional Sessions Judge, Mukhed has rejected the application with the observations that the offence punishable under Section 332 of IPC is non-compoundable and as such the parties cannot be permitted to compound the said offence.

d. The applicants-original accused have thus approached this Court by filing the present Criminal Application under Section 482 of Criminal Procedure Code for quashing the criminal proceeding post-conviction for non-compoundable offence on settlement between them and the informant-complainant.

4. Mr. Katneshwarkar, learned counsel for the applicants submits that in a case ***Gian Singh v. State of Punjab and Others***, reported in (2012) 10 SCC 303, the Supreme Court while answering the reference, held that quashing of the offence or criminal proceeding on the ground of settlement between an offender and a victim is not the same thing as compounding an offence. In compounding of offences, power of a criminal court is circumscribed by the provisions contained under Section 320 of Cr.P.C. and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for

quashing of a criminal offence or criminal proceeding or criminal complaint under Section 482 of Cr.PC. is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. The Supreme Court has also observed that the inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power i.e. (i) to secure the ends of justice or (ii) to prevent abuse of the process of the court.

5. Learned counsel for the applicants submits that the applicants and respondent no.2-informant have, in order to put an end to the dispute and to restore peace, arrived at an amicable settlement.

6. Learned counsel for the applicants, in order to substantiate his contention, placed reliance on the following cases :

1. ***Kiran Tulshiram Ingale v. Anupama P. Gaikwad and Others***, reported in 2006 Cr.L.J. 4591 : 2007 (2) RCR (Criminal) 842.

2. ***Shivaji S/o Haribhau Jawanjal and Another v. State of Maharashtra*** [Criminal Application (APL) No. 1028 of 2019 decided by the Division Bench of this Court at Nagpur on 12.02.2020].
3. ***Maya Sanjay Khandare and Othes v. State of Maharashtra***, reported in 2021 (1) RCR (Criminal) 450.
4. ***Gian Singh v. State of Punjab and Others***, reported in (2012) 10 SCC 303.

7. Learned counsel for respondent no.2-informant submits that respondent no.2-informant has filed an affidavit-in-reply. The parties have arrived at an amicable settlement to maintain cordial and good relations between them in future and the incident had taken place in a heat of moment. The applicants are politicians having good future in politics and respondent-informant is also in service. In view of the same, they have entered into a compromise which is placed before the court as per Exhibit "A".

8. Learned APP submits that respondent no.2-informant is a public servant and the incident had occurred for the reason that he had not received the phone call of the applicants-original accused.

Respondent no.2-informant was discharging his duties as a public servant in the office and the applicants, in furtherance of their common intention, went there, assaulted and voluntarily caused hurt to him in the office itself. Learned APP submits that even it is observed in the case of **Gian Singh** (supra) that in what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute would dependent on the facts and circumstances of each case and no category can be prescribed. In the instant case, respondent no.2-informant is a Zilla Parishad employee and the applicant-original accused no.1 is a Member of the Zilla Parishad. Learned APP submits that even learned Judicial Magistrate, First Class, while recording the conviction against the applicants, has observed that the conduct of the accused is unwarranted and if such conduct is dealt with soft hands, a very bad message will go to the society. Learned Magistrate has thus refused to extend the benefit under the Probation of Offenders Act to the applicants-original accused persons and also observed that the applicants-accused are required to be dealt with stern hands.

9. Learned APP submits that in the case of ***Maya Sanjay Khandare*** (supra) the Full Bench of this Court, while answering the reference, has observed that ordinarily the contention that the convict and the informant-complainant have entered into a compromise after judgment of conviction can be raised only before the appellate/revisional court in proceedings challenging such conviction. It is only in rarest of rare case the court may quash the criminal proceedings post-conviction for a non-compoundable offence on settlement between the convict and the informant/complainant. The Full Bench, to illustrate this, has given two examples (i) where a jurisdictional issue going to the root of the matter is raised for challenging the conviction and (ii) in a matrimonial dispute where the parties have agreed to settle their differences. It is reiterated by the Full Bench that such exercise of jurisdiction under Section 482 of the Code should be limited to the rarest of rare case when found necessary to prevent abuse of the process of the court or to secure the ends of justice.

10. We have carefully considered the submissions advanced by the learned counsel for the respective parties and the learned APP for the respondent-State. With their able assistance, we have

perused the grounds taken in the application, annexures thereto, the reply filed by respondent no.2-informant along with the compromise deed and the case law cited by the respective parties.

11. In the case of ***Kiran Tulshiram Ingale*** (supra), the Division Bench of this Court has dealt with the preliminary objection raised by the respondent State to the maintainability of the application under Section 482 of Cr.P.C. for the purposes of quashing of the criminal proceedings at a stage when the criminal proceedings have led to conviction of the accused. The Division Bench has given a finding in the affirmative and upheld the maintainability of such application with detailed reasons. The Division Bench has referred the observations made by the Apex Court in the case of *B. S. Joshi v. State of Haryana* (2003 Cri.L.J. 2028). The Division Bench has answered the question regarding maintainability of an application filed under Section 482 of Cr.P.C. even after conviction of the applicant, as in the affirmative.

12. When the Special Leave Petition in *Gian Singh v. State of Punjab and another*. (2000) 15 SCC 118 came up for hearing, the two-Judge Bench of the Supreme Court doubted the correctness of

the decisions of the Supreme Court in ***B. S. Joshi and others v. State of Haryana and another*** [(2003) 4 SCC 675], ***Nikhil Merchant v. Central Bureau of Investigation and another*** [(2008) 9 SCC 677] and ***Manoj Sharma v. State and others*** [(2008) 16 SCC 1] and referred the matter to a larger Bench. Hence, the question before the larger Bench was with regard to the inherent power of the High Court under Section 482 of Cr.P.C. for quashing criminal proceedings against an offender who has settled the dispute with the victim of the crime but the crime in which he is allegedly involved is non-compoundable under Section 320 of Cr.P.C. The larger Bench thus, in ***Gian Singh v. State of Punjab and Others*** [(2012) 10 SCC 303], in para 61, summarised the position that emerged from the discussion. Para 61 is reproduced hereinbelow:

“61. ... the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (1) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash

the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court

may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

In para 58 of the judgment, the larger Bench of the Supreme Court has made the following observations which may be useful in deciding the present criminal application.

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute

between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to

dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

13. In the case of ***Maya Sanjay Khandare*** (supra) a Full Bench was constituted to answer the following two questions:

(A) In a prosecution which has culminated in a conviction, whether the power u/s. 482 Cr.P.C. ought to be exercised for quashing the prosecution/conviction altogether, (instead of maintaining it and considering the issue of modification of the sentence) upon a settlement between the convict and the victim/complainant?

(B) Whether the broader principles/parameters as

set out in *Gian Singh v. State of Punjab* and another (2012) 10 SCC 303, *Narinder Singh v. State of Punjab* (2014) 6 SCC 466 and *Parbatbhai Aahir and others v. State of Gujrat* (2017) 9 SCC 641 have been correctly applied in deciding *Udhav Kisanrao Ghodse, Ajmatkhan Rahematkhan and Shivaji Haribhau Jawanhal*?

In para 33, while answering question (a), the Full Bench has made the following observations:

“33. While answering Question (A) we may observe in the light of the settled legal position as under:

At the conclusion of the criminal trial the Court on finding the evidence on record led by the prosecution to be sufficient to prove the guilt of the accused would proceed to convict the accused. The remedy of challenging the order of conviction is available to the accused by way of an appeal. Any compromise entered into post-conviction for a non-compoundable offence cannot by itself result in acquittal of the accused. Similarly the Court has no power to compound any offence that is non-compoundable and not permitted to be compounded under Section 320 of the Code. The compromise entered into therefore is just a mitigating factor that can be taken into account

while hearing the appeal/revision challenging the conviction and which factor has to be taken into consideration while imposing appropriate punishment/sentence. It is not permissible to set aside the judgment of conviction at the appellate/revisional stage only on the ground that the parties have entered into a compromise. In a given case the appellate Court/revisional Court also has the option of not accepting the compromise. Thus if the judgment of conviction cannot be set aside in an appeal/revision only on the ground that the parties have entered into a compromise similar result cannot be obtained in a proceeding under Section 482 of the Code.”

14. In the Case of ***Shivaji S/o Haribhau Jawanjal*** (supra), the Division Bench of this Court at Nagpur, by referring all the above cases, has observed that reformation of an offender is most crucial to answer the question. Applicant no.1 has shown extreme repentance on his part and has assured to not repeat the mistake and at the same time, applicant no.2, the victim of crime, has also decided to pardon the applicant no.1 of his sin. The Division Bench has accepted the settlement reached by the parties and exercised the inherent power under Section 482 of Cr.PC. to interfere in the criminal proceedings to secure the ends of justice.

15. Though the Hon'ble Supreme Court in ***Gian Singh v. State of Punjab and Others*** (supra) has discussed certain categories of cases, however, further held that the list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

16. In the facts of the instant case, respondent no.2-informant is a public servant. The applicants are politicians. Applicant no. 1 herein is a Member of the Zilla Parishad. Respondent no.2-informant is a public servant working in the office of Minor Irrigation, Mukhed. At the relevant date, time and place, respondent no.2-informant was busy in discharging his official work. The applicants went there and extended him beating in the office itself on the ground that he did not receive their phone call.

17. We have carefully gone through the affidavit-in-reply of respondent no.2-informant filed in the present application. In para 3 of the affidavit-in-reply, it is stated that the applicants are politicians having good future in politics and respondent no.2-informant is also in service. Though in the compromise petition, it

is stated that the applicants have tendered an apology and therefore, respondent no.2-informant is not interested in their conviction, however, in our considered opinion, the applicants herein have not shown repentance on their part and even they have not assured as not to repeat the mistake in future.

18. We have noticed that nowadays there is a growing tendency to make assault on public servants discharging their official duties under various pretext. There are cases of assault on the public servants in connection with excavation of sand illegally from the river bed, assault on doctors and hospital staff and causing damage to the public property, assault on R.T.O. officials by the errant drivers, assault on the officials of M.S.E.D.C.L. and the drivers and conductors of M.S.R.T.C., assault on police staff enforcing the Covid norms at public places etc. This tendency needs to be discouraged by taking stringent view in such matters. We are aware that each case will depend on its own facts and no straight jacket formula can be prepared to deal with it.

19. In the facts of the instant case, the applicants-accused persons have settled the matter amicably with respondent no.2-

complainant (informant) for their good future in politics. In our considered opinion, the ends of justice could not be secured by accepting such type of settlement. We are not inclined to set up an altogether new trend encouraging the politicians, as in the present case, to settle their dispute post-conviction to achieve better future political prospects. However, the appeal preferred by the applicants against the judgment and order of conviction against them bearing Criminal Appeal No. 12 of 2013 is still pending before the learned Additional Sessions Judge, Mukhed. Thus, without getting influenced by the observations made herein above, the learned Judge of the appellate court may consider the settlement arrived at between the parties as a mitigating circumstance to reduce the sentence. However, we are not inclined to quash the criminal proceedings. Hence, we proceed to pass the following order:

ORDER

Criminal Application No. 1120 of 2021 is hereby dismissed.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)

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