

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

46 CRIMINAL APPLICATION NO.3227 OF 2019

SUBHADRABAI SHIVRAJ HAKDALE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

.....
Advocate for Applicant : Mr. Vivek V. Kabade h/f Mr. Sandeep D. Munde
APP for Respondent-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. A. D. Nande
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR, C. MORE, JJ.
DATED : 20th DECEMBER, 2021**

PER COURT:-

1 We have heard learned counsel for the applicant (original complainant) and learned counsel appearing for respondent No.2 (original accused). This criminal application is filed for quashing of the proceeding post conviction, on settlement.

2. In terms of the view taken by the Full Bench of this Court in the case of **Maya Sanjay Khandare vs. State of Maharashtra** reported in 2021 (1) Mh.L.J. 613, learned counsel for the applicant and learned counsel for respondent No.2 seek leave to make appropriate submissions before the lower appellate court, before whom criminal appeal No. 13 of 2013 preferred against the judgment and order of conviction, is pending, for treating the compromise post conviction as mitigating circumstance.

3. In the case of **Maya Sanjay Khandare** (supra), since there was disagreement, the Division Bench has framed two questions and sought reference to be made to the Larger Bench. The questions were framed and the larger Bench was constituted. Those questions are re-produced herein below:-

(A) *In a prosecution which has culminated in a conviction, whether the power under section 482, Criminal Procedure Code 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 vs. State of Punjab and another, 2013 (1) Mh.L.J. (Cri.) (S.C.) 417 = (2012) 10 SCC 303, Narinder Singh vs. State of Punjab, 2014(4) Mh.L.J. (Cri.) (S.C.) 241 =(2014) 6 SCC 466 and Parbatbhai Aahir and others vs. State of Gujarat, 2018(2) Mh.L.J. (Cri.) (S.C.) 1 - (2017) 9 SCC 641 have been correctly applied in deciding Udhav Kisanrao Ghodse, Ajmatkhan Rahematkhan and Shivaji Haribhau Jawanjal?*

4. So far as the question “A’ is concerned, which is relevant for the present discussion, in para 33 of the judgment, the Full bench has answered the same with 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.

Hence, we hold that ordinarily the contention that the convict and the informant/complainant have entered into a compromise after the judgment of conviction can be raised only before the appellate/revisional Court in proceedings challenging such conviction. It would be a sound exercise of discretion under Section 482 of the Code and in accordance with the law of the land to refuse

to quash criminal proceedings post-conviction for a non-compoundable offence only on the ground that the parties have entered into a compromise. Instead the Court can permit the convicted party to bring to the notice of the appellate/revisional Court the aspect of compromise. Having said so, it is only in rarest of rare cases that the Court may quash the criminal proceedings post-conviction for a non-compoundable offence on settlement between the convict and the informant/complainant. To illustrate, where a jurisdictional issue going to the root of the matter is raised for challenging the conviction or in matrimonial disputes where the parties have agreed to settle their differences, jurisdiction under Section 482 of the Code could be exercised. Such exercise of jurisdiction should be limited to the rarest of rare cases when found necessary to prevent the abuse of the process of the Court or to secure the ends of justice. Thus while holding that inherent power under Section 482 of the Code could be exercised for quashing criminal proceedings even at the appellate/revisional stage as held in Kiran T. Ingale (supra) such exercise of jurisdiction should be limited to the extent stated hereinabove. The ratio of the decision in Kiran T. Ingale (supra) has to be applied subject to aforesaid limitations. Further, the expression "criminal proceedings" would cover the entire journey of the proceedings commencing from its initiation till the proceedings culminate giving it seal of finality. Question (A) is answered accordingly."

5. Learned counsel for the applicant, thus on instructions seeks leave to withdraw this application with liberty to the applicant so also respondent No.2 to make appropriate submissions before the lower

appellate court in the light of the above observations made by the Full Bench while answering reference question 'A'.

6. In view of the above, leave granted. The application is hereby disposed of as withdrawn with liberty to the parties to make appropriate submissions before the lower appellate court in the pending criminal appeal No. 13 of 2013 to treat the compromise post conviction arrived at between the parties as mitigating circumstance while disposing of the said criminal appeal.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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