

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 3235 OF 2019

GANESH S/O. MAHADEO MUNGASE
AND OTHERS

... APPLICANTS

VERSUS

THE STATE OF MAHARASHTRA AND
OTHERS

..RESPONDENTS

....
Advocate for the Applicants : Shri. S.S. Thombre
A.P.P for Respondent No 1 & 2 : Mr. S. J. Salgare
....

**CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR,JJ.**
DATE : 18TH,MARCH, 2021

PER COURT :-

1. By this application, the applicants who have been convicted in Regular Criminal Case No. 216 of 2012, vide Judgment dated 29.03.2016, have put forth prayer clause 'B' and 'C' as under :-

" (B) This Hon'ble Court may be pleased to quash and set aside the Judgment and order of conviction passed by the learned J.M.F.C Asthi in Regular Criminal Case No. 216 of 202 dated 29.03.2016 and further be pleased to acquit the applicants from the offence in question and for that purpose issue necessary orders.

(C) Pending the hearing and final disposal of this Criminal Application, the further proceedings in Criminal Appeal Nos. 48 of 2016 and 49 of 2016 pending on the file of

learned Sessions Judge, Beed may kindly be stayed and for that purpose issue necessary orders."

2. The applicants as well as respondent No.3 are present in the Court. The learned Advocate for the applicants and respondent No.3 have identified their respective clients. The compromise terms arrived at between the parties dated 03.09.2019, that were filed before the learned Judicial Magistrate First Class in Misc. Criminal Application No. 465 of 2014, are at annexure 'C', Page No.45 of the paper book.

3. The learned prosecutor submits that the law on compounding of an offence on settling of a dispute post conviction, is now well settled, in view of the Judgment delivered by the learned full bench of this Court at Nagpur in *Criminal Application (APL) No. 709 of 2020 filed by Sau. Maya Sanjay Khandare and Another Vs. State of Maharashtra*.

4. There is no dispute that the parties are before us in connection with a marital discord and litigation that emerged between them. By Judgment dated 29.03.2016, the accused have been convicted for an offence punishable under Section 498-A of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for one year along with fine of Rs. 200/-. They are acquitted of the offence punishable under

Sections 323 and 504 of the Indian Penal Code.

5. The learned Advocate for the applicants submits that the original informant has agreed to accept an amount of Rs. 12,00,000/- (Rupees Twelve Lakh) as the settlement amount. Rs. 6,00,000/- (Rupees Six Lakh) has already been received by her. After this Court records the settlement between the parties, the residual amount of Rs. 6,00,000/- (Rupees Six Lakh) would be paid within 30 days from today.

6. The learned Advocate for the informant confirms that the amount of Rs. 6,00,000/- (Rupees Six Lakh) has been received and the residual amount can be paid within 30 days from today. He however submits that in the event the accused resile from their statement, after the same is recorded in this order, the informant would be constrained to approach this Court for further orders. He further submits that two appeals bearing Numbers 48 of 2016 and 49 of 2016 filed by the accused are pending before the learned Sessions Judge at Beed and both these appeals can be disposed off by this Court.

7. In the matter of *Nitesh Raosaheb Misal & Others Vs. The State of Maharashtra and Another*, the learned Single Judge of this Court (Coram : Smt. Sadhana S. Jadhav, J.) 2015 ALL MR

(Cri). 3615, has recorded the amicable settlement between the parties (divorce by mutual consent) and has compounded the offence punishable under Section 498-A of the Indian Penal Code. *In Criminal Application No. 3439 of 2015, Vishnu S/o Mahadeo Aghav and two others Versus The State of Maharashtra and Another*, the learned Division Bench of this Court, vide its order dated 7th October 2015, has recorded the compromise in between the parties and the Judgment of conviction impugned therein, was quashed and set-aside. In the matter of *Arvind Barsaul and Others Vs. The State of Madhya Pradesh and Another (2008) 5SCC 794*, the Hon'ble Apex Court accepted the compromise terms between the parties during the pendency of the appeal and has compounded the offence punishable under Section 498-A of the Indian Penal Code and has quashed the Judgment of conviction.

8. The learned full bench of this Court in *Sau. Maya Sanjay Khandare (supra)* has observed in paragraph No.33 as under :-

" 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 case 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 the 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. "

9. It is thus obvious that if an order of conviction is a subject matter of pending proceedings before the appellate Court or before this Court and the parties have arrived at a compromise, this Court could modify the sentence depending upon the facts and circumstances emerging from each case. In the instant case, all the accused have paid one time settlement amount of Rs. 12,00,000/- (Rs. Six Lakh paid and Rs. Six Lakh is to be paid). The couple has agreed for a divorce by mutual consent. A girl child born out of the marriage would be in the custody of the mother. The accused are willing to suffer further compensation amount in lieu of the sentence of one year in jail and are also willing to suffer any reduced sentence as this Court may deem appropriate.

10. Considering the above, and keeping in view that no purpose would be served by keeping the litigation alive between the parties. The applicants are to suffer a sentence of one year in jail. We are of the considered view, in the peculiar facts and circumstances of this case, that the accused could be sentenced till the rising of the Court. Since this order is being passed at about 11 a.m. the learned Advocate for the applicants submits that they bow to the sentence as is awarded by this Court and are also willing to pay additional cost in lieu of the reduced sentence.

11. We find that applicant No.4 is a married sister of the husband, applicant No.1. She is residing in her marital home for more than a decade in the same Taluka. As such, we deem it appropriate to direct applicant nos. 1 to 3 to pay an additional amount of Rs. 25,000/- each along with the amount of Rs. 6,00,000/- which would be paid to respondent No.3 within 30 days from today. In so far as applicant No.4 is concerned, we direct her to pay an amount of Rs. 10,000/- to respondent No.3 within 30 days from today.

12. As such, this application is partly allowed. The two Criminal Appeals No. 48 of 2016 and 49 of 2016, pending before the learned Sessions Judge Beed, stand disposed off as

being infructuous and the impugned order of conviction dated 29.03.2016 awarding the sentence of one year imprisonment with fine stands modified with the applicants being sentenced till the rising of the Court (today) and with the amount of Rs. 25,000/- each (Applicants No.1 to 3) and Rs. 10,000/- (Applicant No.4) to be paid along with the residual amount of Rs. 6,00,000/- (Rupees Six Lakh), within 30 days from today.

13. At this juncture, we are informed that applicant No.4 has a Baby and it would be a matter of great discomfort for the applicant, her Baby as well as this Court, if they are to suffer the sentence till the rising of this Court, in the Court hall. In view of the said situation, we are permitting applicant No.4 to carry her child and be accommodated in the creche available in the High Court, till 4.30 p.m.

14. It is made clear that, except for the reason of default in the payment of amount, none of the parties would be permitted to re-open the dispute or raise any claim, financial or otherwise, either directly or indirectly.

(B.U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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