

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APPA) NO. 143 OF 2021

IN

CRIMINAL APPEAL NO. 22 OF 2009 (D)

(Ramesh s/o Malaya Itgurla ..vs.. State of Maharashtra, through its PSO, PS Sironcha, District
Gadchiroli)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Rajnish Vyas, Counsel for the applicants,
Mr. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 23-07-2021

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. This application is preferred by the victim, who was then aged 8 years and the accused, who is convicted by this Court (Coram : Vinay Joshi, J.), for offences punishable under Sections 354 and 451 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for one year and to payment of fine of Rs.2,000/- for offence punishable under Section 354 of the Indian Penal Code and to suffer rigorous imprisonment for one year and to payment of fine of Rs.1,000/- for the offence punishable under Section 451 of the Indian Penal Code.

3. The application, which is styled as an application

under Sections 320 and 482 of the Criminal Procedure Code, 1973 (“Code” for short) seeks the following reliefs :

“(i) Quash and set aside or permit the applicants to compound offences under sections 451 and 354 of Indian Penal Code vide Judgment dated 08-9-2020 in Criminal Appeal No.22/2009, on such terms and conditions, in the interest of justice.

(ii) Stay/keep in abeyance judgment dated 08-9-2020 in Criminal Appeal No. 22/2009 passed by this Hon’ble Court during pendency of instant application, on such terms and conditions, in the interest of justice.

(iii) Grant ad interim relief in terms of prayer clause (ii).”

4. Facts, shorn of unnecessary details, are that applicant 1 is the victim, whom the accused allegedly stripped and sexually ravished by committing criminal trespass into the house of her father. Contrary to the averment in the application, applicant 1 is not the first informant, who, as a fact, is her father Yellappa.

5. The incident occurred on 15-10-2005, Crime 35/2005 was registered, a trial ensued which culminated in the conviction of the accused under Sections 452 and 376 read with Section 511 of the Indian Penal Code. The trial Court sentenced the accused to suffer rigorous imprisonment for the period of three years and to payment of fine of Rs.200/-.

6. The accused preferred Criminal Appeal 22/2009

which is decided by this Court (Coram : Vinay Joshi, J.) vide judgment dated 08-9-2020 and the accused is convicted and sentenced as afore-noted.

7. This application is liable to be rejected for reasons more than one.

8. It is well settled that the power of compounding of offence is statutorily regulated under Section 320 of the Code. While the offence punishable under Section 354 of the Indian Penal Code was indeed compoundable, before coming into force of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), the offence punishable under Section 451 of the Indian Penal Code is certainly not compoundable at the behest of the victim. In this view of the matter, the question of considering compounding, just does not arise.

9. *Arguendo*, even if the power to compound were to be available, on principle, the power could have been exercised by the learned Judge who was in seisin of the criminal appeal and who ultimately decided the appeal and convicted the accused, albeit of lesser charges.

10. The submission that *de hors* Section 320 of the Code, this Court is empowered to quash the conviction recorded and sentence awarded by a coordinate Bench, in exercise of power under Section 482 of the Code, is

unacceptable.

11. Power under Section 482 of the Code, wide as the power is, cannot be exercised to nullify the judgment in appeal which is rendered by a coordinate Bench. It is submitted that since the offence under Section 354 of the Indian Penal Code was compoundable, the ratio of the Full Bench decision of this Court in the case of ***Sau. Maya Sanjay Khandare & Another v. State of Maharashtra, 2021 All MR (Cri) 660*** would not be attracted. In my considered view, apart from the fact that offence punishable under Section 451 of the Indian Penal Code is not compoundable, at the behest of the victim herein, even if it is assumed that the offence is compoundable, it would be a sound exercise of discretion for the coordinate Bench, not to entertain prayers akin to those made herein, the effect of which, if granted, would be to nullify the judgment of the coordinate Bench.

12. The purported compromise could have been brought to the notice of the learned Judge who decided the appeal, and the same could have been then considered in accordance with the law.

13. The application is dismissed.

JUDGE