

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.575 OF 2020

1. Sanjay s/o Ganpat Jadhav
Age: 30 years, Occu.: Agriculture,
2. Dilip s/o Ganpat Jadhav
Age: 25 years, Occu.: Agriculture,
3. Madhukar s/o Bapurao Rathod
Age: 35 years, Occu.: Agriculture,
4. Kailash s/o Bapurao Rathod
Age: 25 years, Occu.: Agriculture,
5. Bapurao s/o Phulsing Rathod
Age: 55 years, Occu.: Agriculture,
6. Ganpati s/o Kishan Jadhav
Age: 50 years, Occu.: Agriculture

All R/o. Sindhi Tanda, Taluka Umri,
Dist. Nanded

... Applicants

Versus

1. The State of Maharashtra
Through Police Officer,
Umri Police Station, Taluka Umri,
Dist. Nanded
2. Vishwanath s/o Pandurang Rajarwad
Age: 30 years, Occu.: Agriculture,
R/o. Sindhi, Taluka Umri,
Dist. Nanded

... Respondents

...

Mr. S. S. Gangakhedkar, Advocate for applicants.
Mr. M. M. Nerlikar, APP for respondent No.1.
Mr. S. D. Munde, Advocate for respondent No.2.

...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 19th August, 2022

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2. Present application has been filed for getting the order of conviction recorded in R.C.C. No.59 of 2014 on 26.09.2016 by learned Judicial Magistrate First Class, Umri, Dist. Nanded quashed and set aside and thereby allowing the Criminal Appeal No.12 of 2016 filed before the learned Additional Sessions Judge at Bhokar, Dist. Nanded, in view of the compromise that has arrived between the parties.

3. The appellants are the original accused persons, who had faced the trial for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 148 read with Section 149 of the Indian Penal Code. The case was arising out of the FIR lodged by present respondent No.2. All the applicants have been acquitted of the offences punishable under Sections 326 and 504 of Indian Penal Code, however, they have been convicted for the offences punishable under Sections 324, 323, 506, 143, 148 read with Section 149 of Indian Penal Code. After their conviction, they have filed Criminal Appeal No.12 of 2016 and it is

pending before the learned Additional Sessions Judge, Bhokar. In the said appeal, it was informed that the matter has been compromised between the parties. However, in view of the fact that Section 324, 143, 148 read with Section 149 of Indian Penal Code are not compoundable, the applicants before this Court for quashing.

4. The learned Advocate appearing for respondent No.2 as well as the victims, who had sustained injuries, have filed their affidavits on record. All of them are stating that after due deliberation and discussion, they have unanimously decided to put an end to the dispute and, in fact, the incident dated 12.06.2014 itself was an outcome of an misunderstanding, confusion and misconception between the parties. They want to maintain good relations with each other and, therefore, respondent No.2 and the victims are giving consent for the compromise and quashing of the conviction.

5. The question is when already the conviction has been awarded, whether the powers of this Court under Section 482 of the Code of Criminal Procedure can be exercised. The Full Bench of this Court in ***Maya Sanjay Khandare and others Vs. State of Maharashtra, [2021 (1) Mh.L.J. 613]***, held that :-

“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.”

The Hon’ble Supreme Court in *Ramgopal and Ors. Vs. The State of Madhya Pradesh*, [MANU/SC/0728/2021], which was decided after the decision of the Full Bench of this Court, has observed thus :-

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding

the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extra-ordinary power under Section 482 Code of Criminal Procedure would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Code of Criminal Procedure may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh & Ors. vs. State of Punjab & Ors.*, MANU/SC/2035/2014 : (2014) 6 SCC 466, p.29 and *Laxmi Narayan (Supra)*.

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man

escape, if it can be avoided.”

Therefore, in view of this legal position, we are now required to consider as to whether the case is made out for setting aside the conviction.

6. Here, it is to be noted that the parties are from the same village and as per the prosecution story, six accused persons had assaulted the informant and others by sticks, stone, fists and kick blows. There was dispute over the right of way from the field of the informant. That means there is civil angle to the said dispute and the incident might have also occurred from the point of view of right to protect the property. Offence under Section 324 of Indian Penal Code could have been invoked only against some accused persons, who had used sticks. However, as regards the other accused persons, who had used stones, fists and kicks, the offence could be under Section 323 of Indian Penal Code. Merely because all of them have come together, it cannot be said that they have formed unlawful assembly. Though it appears that the injuries on the informant and witnesses were proved by examining the medical officer, the accused persons stood acquitted of the offence punishable under Section 326 of Indian Penal Code. Under those circumstances, the learned Magistrate ought to have considered grant of benefit under the Probation of Offenders Act, but it has been brushed

aside only on the ground that offence of such kind cannot be considered for grant of benefit under the Probation of Offenders Act. In fact, there are no criminal antecedents of the accused persons brought on record on behalf of the prosecution. The learned Magistrate ought to have gone into those aspects of whether to grant the said benefit or not. All these points are driving us to conclude that this can be taken as one of those rare cases in which the exercise of our powers under Section 482 of the Code of Criminal Procedure can be used. So also, in view of ***Ramgopal and others (Supra)***, it can be seen that the nature of the offence was in fact personal, in view of the fact that it was pertaining to the dispute in respect of right of way from the field of the informant and further the fact has not been considered by the trial Court, as to whether there was right of private defence i.e. to protect the property for the accused or not. Therefore, in the nutshell, a case is made out to quash the conviction, however, while using this discretion, this Court has to be guarded on the point that there was an opportunity to the parties to settle their dispute when the matter was before the Trial Court, that has not been done. But now after the conviction, the settlement appears to have been done. Under such circumstance, it can be allowed subject to deposit of cost to the High Court Legal Services, Sub Committee, Aurangabad. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The order of conviction recorded in R.C.C. No.59 of 2014 dated 26.09.2016 for the offences punishable under Sections 324, 323, 504, 506, 143, 148 read with Section 149 of Indian Penal Code stands quashed and set aside so also the Criminal Appeal No.12 of 2016 pending before the learned Additional Sessions Court at Bhokar stands allowed, in view of the settlement arrived between the parties. However, the applicants to deposit amount of Rs.30,000/- to the High Court Legal Services Sub-Committee, Aurangabad within a period of two weeks from today.
- III) Rule made absolute in above terms.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm