

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3295 OF 2021

1. Shivaji s/o Arjun Jodh
Age: 35 years, Occu.: Agri.,
 2. Vinayak @ Parja s/o Arjun Jodh
Age: 30 years, Occu.: Agri.,
 3. Arjun s/o Waman Jodh
Age: 55 years, Occu.: Agri.,
All R/o. At present Mandakhali,
Tq. and Dist. Parbhani
- ... Applicants

Versus

1. The State of Maharashtra
Through Police Station, Daithan,
Tq. and Dist. Parbhani
 2. Nivrutti s/o Jijaji Shiral,
Age: 60 years, Occu.: Agri.,
R/o. At Present Mandakhali,
Tq. and Dist. Parbhani
- ... Respondents

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Mr. S. N. Janakwade, Advocate for applicants.
Mr. A. M. Phule, APP for respondent No.1 – State.
Mr. S. B. Sontakke, Advocate for respondent No.2.

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

DATE : 10th August, 2022.

JUDGMENT [Per Vibha Kankanwadi, J.] :-

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

2. Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the judgment and order of conviction passed by learned Additional Chief Judicial Magistrate, Parbhani in Regular Criminal Case No.532 of 2015 dated 30.11.2018 under Section 324, 323 read with Section 34 of Indian Penal Code, in view of the compromise that has arrived at between the parties.

3. The appellants are the original accused, who faced trial for the aforesaid Sections before the learned Additional Chief Judicial Magistrate, Parbhani. The said case was arising out of the FIR lodged by present respondent No.2. After their conviction, they have filed Criminal Appeal No.84 of 2018, which is pending before the learned Sessions Court, Parbhani. In the said appeal, they filed an application stating that now the matter is compromised in view of the settlement and, therefore, the conviction be set aside and their appeal be allowed accordingly. However, in view of the fact that Section 324 of Indian Penal Code is not compoundable, the application was rejected. Hence, they are before this Court.

4. Learned Advocate appearing for respondent No.2 – informant submitted that such compromise has taken place. Both the parties are from the same village and they want to maintain good relations now.

The incident had occurred in spur of moment. Even the informant and accused are the adjoining land holders. Now there is no sense of enmity between them and, therefore, respondent No.2 is agreeing for such compromise.

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/revisonal 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/revisonal 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 a small village. They have adjoining lands and under such circumstance, they would be required to come in contact with each other almost daily. Perusal of the impugned judgment would also show that the facts of the case are that the informant's son was ploughing the land near the common bandh and all the accused persons went and started disputing as to why the

ploughing activity is near the common bandh. Informant started pursuing that the son will not plough the land, but thereafter the informant was assaulted by stone by accused No.1 and other two accused had assaulted him by kicks and fists. Threat was given allegedly to kill. Thus, it is to be noted that the facts disclosed in the offence under Section 324 of Indian Penal Code are only against accused No.1 and accused Nos. 2 and 3 appears to have been added under Section 34 of Indian Penal Code. The alleged eye witness appears to have been turned hostile, but had given certain admissions in his cross-examination conducted by learned APP. It is then stated that the boundary dispute is in existence since prior to the date of incident. Further, it appears that the injuries to the informant were proved by examining the medical officer. Informant had sustained injury to the left side of his head and as aforesaid, it is stated to have been caused by stone. Another fact to be noted is that the Advocate for the accused had pleaded for grant of benefit of Probation of Offenders Act, 1958 when the accused were heard on the point of sentence. There were no criminal antecedents of the accused persons, however, only by stating that the offence is serious, that benefit has been refused. 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 bandh 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 entire proceedings in respect of Crime No.59 of 2015 registered with Daithan Police Station, Dist. Parbhani in R.C.C. No.532 of 2015 for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code stands quashed and set aside, in view of the settlement arrived between

the parties. However, the applicants to deposit amount of Rs.15,000/- 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