

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.104 OF 2019

Hemraj s/o Bhagwan Warghane

Vs.

State of Maharashtra through PSO Police Station, Chandrapur,
District Chandrapur and another

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

Court's or Judge's orders

Mr. A. C. Jaltare, Advocate for applicant.
Mr. H. D. Dubey, APP for non-applicant no.1.
Mr. R. P. Masurkar, Advocate for non-applicant no.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 08/03/2022

Criminal Application (APPR) No.83 of 2020

1. Heard Mr. Jaltare, learned counsel for the applicant and Mr. Masurkar learned counsel for the non-applicant no.2.

2. Criminal Application (APPR) No.83 of 2020 filed by the applicant/complainant Madhuri d/o Uddhao Pazare, under Section 301 of the Code of Criminal Procedure, seeks permission to assist the prosecution, to which Mr. Jaltare, learned counsel for the applicant has no objection, considering which, the application is allowed.

3. The applicant namely, Madhuri d/o Uddhao Pazare be added as a party non-applicant No.2, to the memo of revision forthwith.

4. The criminal application is disposed of.

CRIMINAL REVISION APPLICATION 104 OF 2019

1. Mr. Masurkar, learned counsel for the non-applicant No.2 has filed a Pursis Stamp No.7 of 2022 dated 28.02.2022 along with the affidavit of the non-applicant No.2 stating that the dispute between her and the applicant/accused has been amicably settled and she has received a sum of Rs.50,000/- towards full and final settlement of the dispute. Mr. Masurkar, learned counsel for the non-applicant No.2, therefore submits, that the non-applicant No.2 has no objection, if the matter is permitted to be compounded.

2. By the Judgment dated 27.08.2015, the learned Judicial Magistrate First Class has convicted the applicant/accused for the offence punishable under Section 420 of the Indian Penal Code (for short “the IPC”) and has sentenced rigorous imprisonment for 3 years and fine of Rs.5000/-, in default of payment of fine, simple imprisonment for one month. This conviction, has been maintained by the learned Sessions Court in Appeal No.93 of 2015, which came to be dismissed on 02.05.2019, both of which are challenged before this Court by way of the present revision.

3. Mr. Jaltare, learned counsel for the applicant submits, that under the provisions of Section 320(2) of the Code of Criminal Procedure (for short “the Cr.PC.”),

the offence under Section 420 of the IPC is compoundable by the person who is cheated, which in, the present case is the non-applicant No.2, who has given her consent for compounding of the offence. He therefore submits, that the same is required to be so done.

4. The Full Bench of this Court in ***Maya Sanjay Khandare and another Vs. State of Maharashtra, 2021 DGLS (Bom.) 34*** has held that ordinarily the contention, that the convict and the informant/complainant have entered into compromised after the judgment of conviction, can be raised only before the Appellate/Revisional Court in the proceedings, challenging such conviction and it would be sound exercise of this discretion under Section 482 of the Cr. P.C to refuse to quash criminal proceedings post-conviction for a non-compoundable offence only on the ground that the parties have entered into compromise, considering which, since the offence under Section 420 of the IPC is compoundable offence, the same can be permitted to be compounded at the behest of the victim / person cheated. Considering that, the non-applicant No.2, has expressed her settlement and Mr. Masurkar, learned counsel for the non-applicant No.2, on instructions, makes a statement that the offence be compounded, which is accepted, the offence committed by the applicant under Section 420 of the IPC is hereby compounded and the conviction of the applicant by the learned Judicial Magistrate First Class by the judgment

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dated 27.08.2015 and its confirmation by the learned Sessions Court by the judgment dated 02.05.2019 is accordingly quashed and set aside.

5. The criminal revision application is disposed of, in view of the above. No costs.

6. Pending applications, if any, stand disposed of.

JUDGE

Sarkate.