

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1200 OF 2023

Ganesh Dattatraya Kadam

...Petitioner

Versus

The State of Maharashtra and Anr

...Respondents

Mr. A. S. More, Advocate for the Petitioner.

Mr. V. S. Badakh, APP for Respondent No. 1 – State.

Mr. M. K. Jadhav, Advocate for Respondent No. 2.

CORAM : R.M. JOSHI, J.

DATE : OCTOBER 23, 2023

PER COURT:

1. This Petition is filed taking exception to the order dated 24.07.2023 rejecting application filed by the Petitioner and Respondent No. 2 for compounding of offence punishable under Section 326 of the Indian Penal Code.

2. Petitioner is an accused in R.C.C. no. 66/2016. Respondent No. 2 is informant who reported incident dated 15.05.2016 to Yermala Police Station. It is alleged that in the said incident Petitioner assaulted informant who sustained grievous injury. Petitioner was tried before learned JMFC, Washi wherein

by judgment and order dated 05.12.2017 he was convicted for the offences punishable under Sections 326 and 504 of IPC and was sentenced to suffer RI for two years with fine.

3. It is the contention of the petitioner that joint application was filed vide Exh. 26 by Petitioner/ Accused and Respondent/Informant stating that the Petitioner and Respondent no. 2 are neighbours and that previously there were cordial relations between them. In order to maintain the said relationship in future, they have compromised the case. Informant claims to have no grievance against the present Petitioner.

4. Learned Counsels for the Petitioner and Respondent No. 2 submitted that only for the reason that offence punishable under Section 326 IPC is non compoundable the said application came to be rejected. It is submitted that in view of judgments of Hon'ble Apex Court in case of Ramgopal and Another Vs. State of Madhya Pradesh, 2021 SCC OnLine SC 834 and Ramawatar Vs. State of Madhya Pradesh, 2021 SCC OnLine SC 966, there is no bar for compounding of offence even after conviction of the accused. By relying on the judgment

of this Court in case of Vitthal Bhanudas Bhandwalkar and Others Vs. The State of Maharashtra and Another, 2016 ALL MR(Cri) 4713, it is submitted that in the similar set of facts in respect of offence punishable under Section 326 of IPC, though it is not compoundable, compounding was permitted.

5. In view of judgments in Ramawatar and Ramgopal and Anr (supra) there is no bar to entertain an application for compounding even after the conviction of accused. The only question arises for determination is as to whether compounding for offence under Section 326 of IPC is permissible. In case of Gian Singh Vs. State of Punjab & Another, (2012) 10 SCC 303, Hon'ble Apex Court has held that the quashment of criminal proceeding under Section 482 of CrPC the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from power of a criminal Court of compounding offences under Section 320. Whether to exercise such power would depend on the facts and circumstances of each case. It is however, held that heinous and serious offences of mental depravity,

murder, rape, dacoity, etc., or under special statutes like Prevention of Corruption Act or offences committed by public servants while working in their capacity as public servants, cannot be quashed even though victim or victim's family and offender have settled the dispute. The said judgment, therefore, clearly lays down the law that in case of offence, as narrated herein above, there cannot be compounding thereof.

6. The relevant consideration would be as to whether the offence is against society at large, it shocks conscience or committed by premeditation etc. In the instant case, perusal of the evidence on record indicates that the incident in question has occurred spontaneously and was not pre-planned. Moreover, offence in question is not against public at large and certainly not heinous. When parties on their own accord and free will have decided to bury their dispute for leading further peaceful life, it would not be in the interest of justice to deny compounding of offence in question. Considering the fact that the Petitioner and the Respondent No. 2 are neighbours and that the incident has occurred in a scuffle spontaneously, this

Court find it to be a fit case to exercise powers under Section 482 of CrPC. Hence, compounding of offence is allowed. In view of provision of Section 320(8) CrPC accused deserves to be acquitted.

7. However, as public machinery has been used in this entire process, this Court find it appropriate to direct Petitioner and Respondent No. 2 jointly to pay some amount to High Court G. P. Library, Aurangabad. Hence, order:

O R D E R

- i) Writ Petition is allowed.
- ii) Impugned order dated 24.07.2023 passed by learned Additional Sessions Judge, Bhoom below Exh. 26 in Criminal Appeal No. 01/2018 is hereby set aside. Application below Exh. 26 is hereby allowed.
- iii) Judgment of conviction in RCC No. 66/2016 dated 05.12.2017 is hereby set aside and accused stands acquitted.
- iv) Fine amount, if paid, be returned to the Petitioner.
- v) Petitioner and Respondent No. 2 are directed to pay Rs. 20,000/- (Rupees Twenty Thousand Only) jointly by way of cost to the High Court Government Pleader's Library, Aurangabad.
- vi) The amount be deposited/paid in two weeks.

If amount is not so deposited, this order shall stand vacated without further reference to the Court and Petition shall stand dismissed.

(R. M. JOSHI, J.)

Malani