

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

CRIMINAL APPLICATION [APL] NO. 92 OF 2023.

Ram s/o Rajaramji Gulhane,
Age 44 years,
Occupation - Agriculturist, Resident
of Ward No.4, Pusla,
Taluq Warud, District Amravati. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
Through Police Station Officer,
Shendurjana Ghat,
Taluq Warud, District Amravati.

2.Shrikant Nirmalkumar Sawane,
Age 35 years, Occupation – Business,
resident of Ward No.5, Pusla,
Taluq Warud, District Amravati. ... **NON-APPLICANTS.**

Mr. S.B. Gandhe, Advocate for the Applicant.
Mr.S.S. Doifode, Addl.P.P. for Non-applicant No.1/State.
Non-applicant No.2 Present before the Court.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.**

DATE : JANUARY 23, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Considering the controversy involved in the matter, and by consent of the learned Counsel present for the parties, Criminal Application is taken up for final disposal at the stage of admission. **Rule** is thus made returnable forthwith. Service on non-applicant no.2 is dispensed with since he is personally present before the Court.

2. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing of the judgment and order of conviction passed by the learned Judicial Magistrate First Class, Warud, District Amravati in Regular Criminal Case No.279/2016, which was confirmed by the learned Additional Sessions Judge-1, Amravati in Criminal Appeal No.72/2020, for the offence punishable under Section 324 of the Indian Penal Code. The ground for

quashing of the judgment and order of conviction is on account of a compromise arrived at between the parties.

3. The learned Magistrate has convicted the applicant / accused and sentenced him to suffer rigorous imprisonment for 6 months along with fine of Rs.5,000/-, with default clause, which has been confirmed by the Appellate Court.

4. The learned Counsel appearing for the applicant/accused would submit that the parties are hailing from the same vicinity, having business relations. In order to maintain harmony, they have settled the dispute and decided to maintain cordial relationship. It has been argued that in the said incident, the applicant/accused was not holding deadly weapon, but, in the sudden quarrel he picked up a stick nearby and gave a blow on the head of non-applicant no.2/injured, which caused bleeding injury. It is submitted that since the offence punishable under Section 324 of the Indian Penal Code is not compoundable, in view of the inherent powers of this Court, it is urged to quash the conviction to secure the ends of

justice.

5. The learned Addl. P.P. has submitted that since the trial Court has already recorded a finding of conviction, it may not be appropriate to invoke the inherent jurisdiction.

6. In pursuance of a settlement arrived in between the parties, a deed of settlement was executed in between them, which has been tendered on record. In the said deed, the injured Shrikant in unequivocal terms has stated that, in order to continue the cordial relations, he at his own has decided to settle the dispute. Copy of the settlement deed has been placed on record. Moreover, the injured has appeared before the Court and admitted about the settlement and equally urged to allow the application.

7. So far as the settlement between the parties is concerned, there is no dispute about the same. The only question which arise is - Whether post conviction, on the basis of a settlement, inherent powers can be invoked by this Court ?

Rgd.

8. The learned Counsel appearing for the applicant/accused would submit that this Court has wide powers under Section 482 of the Code of Criminal Procedure, which are to be used in appropriate cases to secure the ends of justice. He would submit that despite conviction, the powers under Section 482 of the Code can be invoked. In support of said contention, he has placed reliance on the decision of the Supreme Court in case of **Ramgopal and others .vrs. The State of Maharashtra and others - Criminal Appeal Nos.1489 & 1488 of 2012 decided on 29.09.2021 (Manu/SC/0728/2021)**. Besides that, he has relied on the decision of Full Bench of this Court in case of **Maya Sanjay Khandare and others .vrs. State of Maharashtra - 2021 [1] Mh.L.J. 613**, wherein it has been held that in befitting cases to prevent abuse of the process of the Court, inherent powers can be used despite conviction.

9. We have gone through the decision in case of Ramgopal [supra] of which paragraph no.13 is relevant, which is reproduced herein below.

“13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly 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 in 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

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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 and Ors. v. State of Punjab and Ors. MANU/SC/0235/2014 : [2014] 6 SCC 466, p.29 and Laxmi Narayan [supra]. ”

10. Though in the said case, power under Article 142 of the Constitution of India has been resorted, however it has been held that in the cases where compromise is arrived post conviction, the High Court can exercise such discretion keeping in view the circumstances surrounding the incident along with related facts. However, for using powers under Section 482 of the Code, guiding factor is to secure the ends of justice. The Legislature has conferred unbridled powers upon this Court to invoke the same in appropriate cases. This issue fell for consideration before the Supreme Court in case of **Gian Singh .vrs. State of Punjab – [2012] 10 SCC 303** and **Narinder Singh .vrs. State of Punjab – [2014] 6 SCC 466**, wherein it

has been ruled that barring cases of serious nature and the offences against the society, on given facts Court may quash the proceeding on the basis of compromise. The Full Bench of this Court in above referred case of Maya [supra], has specifically formulated a question – Whether on account of settlement, post conviction, the power under Section 482 of the Code can be exercised ?

This Court has analyzed the law in this regard and ultimately answered that in rarest of rare case this Court can quash post conviction on account of settlement.

11. In the light of said position, we have gone through the facts of the case. It reveals from the impugned order of conviction that on the date of occurrence, the applicant has demanded money to injured about the sale of insecticides. At the relevant time there was a dispute in which the applicant took out a stick and gave a blow causing simple injury. It appears that on casual monetary demand the incident had occurred having no strong motive. There were no criminal antecedents of the accused. The parties are resident of same place and decided to maintain harmony. In view of

these peculiar facts we find that a case is made out to quash the order of conviction. However, considering the stage of settlement, we deem it appropriate to set aside the conviction, subject to payment of cost of Rs.5000/-. Moreover, the police have investigated the matter and charge sheet has been filed, therefore, it is desirable to impose costs on the applicant/accused. It is informed by the learned Counsel for the applicant that pursuant to the order passed by the trial Court, the applicant/accused has deposited the fine amount of Rs.5000/- before the trial Court on 13.03.2020. As a consequence of setting aside the order of conviction, the accused is entitled for refund of fine amount, however, on account of cost, we direct that the trial Court to remit the amount of fine of Rs.5000/- to the District Legal Services Authority, Amravati.

12. In view of above, Criminal Application is allowed. The proceeding arising out of Crime No.116/2016 registered with Shendurjana Ghat Police Station, District Amravati for the offence punishable under Sections 324 and 506 of the Indian Penal Code, bearing Regular Criminal Case No.279/2016 before the Judicial

Magistrate First Class, Warud, District Amravati along with the order of conviction dated 13.03.2020, and confirmation of the same by the learned Additional Sessions Judge-1, Amravati in Criminal Appeal No.72/2020 vide order dated 14.12.2022, stands quashed and set aside in view of the settlement arrived between the parties, subject to appropriation of the fine amount towards costs, as stated above. The trial Court be informed for necessary compliance.

13. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE