



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2223 OF 2024

- 1) Vikas S/o Kondiba Thorbole,
Age-45 years, Occu:Agri.,
- 2) Ashruba S/o Tatyaba Thorbole,
Age-48 years, Occu:Agri.,
- 3) Rekha W/o Ashruba Thorbole,
Age-40 years, Occu:Agri.,
- 4) Dattatrya S/o Kondiba Thorbole,
Age-49 years, Occu:Agri.,

All are R/o- Gojwada, Taluka-Washi,
District-Osmanabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Washi, Taluka-Washi,
District-Osmanabad,
- 2) Ramraje S/o Kashinath Thorbole,
Age-42 years, Occu:Agri.,
- 3) Laxman S/o Kashinath Thorbole,
Age-40 years, Occu:Agri.,

Respondent Nos.2 and 3 are:
R/o-Gojwada, Taluka-Washi,
District-Osmanabad.

...RESPONDENTS

...
Mr. R.D. Kawade Advocate for Applicants.
Dr. Kalpalata Patil-Bharaswadkar, A.P.P. for Respondent No.1.
Mr. Amol G. Vasmatkar Advocate h/f. Mr. S.N. Janakwade
Advocate for Respondent Nos. 2 and 3.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 22nd AUGUST, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard finally with the consent of the learned Advocates for the rival parties.
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 the learned Judicial Magistrate First Class, Washi, District-Osmanabad in Regular Criminal Case No.62 of 2015 dated 3rd May 2021 for the offence punishable under Sections 326, 324 read with Section 34 of the Indian Penal Code and to pass further orders in respect of Criminal Appeal No.9 of 2021 pending before the learned Additional Sessions Judge, Bhoom, District-Osmanabad, which challenges the said conviction.

3. Learned Advocate for the applicants and respondent Nos.2 and 3 have submitted that though after the full-fledged trial before the learned Magistrate the applicants are convicted, yet now during the pendency of the Appeal due to the intervention by the respected persons from the village, common relatives, there is a compromise. The applicants and respondent Nos.2 and 3 are distantly related. If the conviction is maintained, then in future it would bring hinder in relationship. They have decided to bury the differences and live peacefully. Accordingly, an application was filed in Criminal Appeal No.9 of 2021 at Exhibit-51 for recording of the compromise and allowing them to compound the offence. However, by order dated 21st March 2024, the learned Additional Sessions Judge, Bhoom rejected the said application and therefore, the applicants had no option but to knock the doors of this Court under Section 482 of the Code of Criminal Procedure. They both have prayed for granting the reliefs claimed.

4. Per contra, the learned APP strongly opposed the application and submits that the prosecution had examined in all ten witnesses to bring home the guilt of the accused. Grievous injuries were caused by the applicants to the informant and the

injured. The weapons used in the commission of the crime are sticks and axe. Axe is a dangerous weapon. Taking into consideration the medical evidence as well as ocular evidence, the learned Magistrate had held that the offence under Section 326 has been made out in respect of the injuries to informant and witness Laxman. Now, on some grounds the informant and the injured are contending that there is a compromise. Such compromises are against the public interest and therefore, the inherent powers should not be used in such cases.

5. At the outset, we would like to consider the legal point first on this aspect, as to whether after the conviction a compromise can be allowed to be recorded and there upon the conviction can be set aside. In the case of *Ramgopal and another vs. the State of Madhya Pradesh, (2022) 1 Mh. L.J. (Crl) 291*, it has been observed that, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, the High Court can quash such proceedings in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, even if the offences are non-compoundable.

The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system. We are also taking note of the decision in ***Ramawatar vs. State of Madhya Pradesh, (2022) 13 SCC 635*** wherein ***Ramgopal and another vs. the State of Madhya Pradesh*** (supra) was considered and it was observed that “We, however, put the further caveat that the powers under Article 142 or under Section 482 of the Cr.P.C. are exercisable in post-conviction matters only when an appeal is pending before one or the other Judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her legal remedies and the finality is subjudice before an appellate Court.” Thus, the pendency of criminal proceedings, be that may before the final Court, is *sine qua non* to involve the superior Court’s plenary powers to do complete justice.

6. We are also taking note of the Full Bench decision of this Court in the case of ***Maya Sanjay Khandare vs. State of***

Maharashtra, 2021(1) Mh.L.J. 613, wherein it is observed that:-

"Hence, 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....."

7. Here, it is to be noted that observations in Paragraph 19 in ***Ramgopal and another vs. the State of Madhya Pradesh*** (supra) would be important for us, which reads thus:-

"19. We thus sum-up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory

framework, the extra-ordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations."

8. The said Paragraph was referred in ***Ramawatar vs. State of Madhya Pradesh*** (supra) also and it has been affirmed. Thus, taking note of the catena of the Judgments referred herein before and also other such decisions, especially that of the Hon'ble Supreme Court, it can be said that the Hon'ble Supreme Court was of the view that when the dispute is settled, then it should be seen by the Court that the complete justice is done in order to maintain peace and relation between the parties if they arrived at a compromise at the later point of time, within the parameters laid down, such powers under Section 482 can be exercised. Definitely these powers are then required to be

exercised in a limited way otherwise disadvantage may be sought by such repeated proceedings.

9. Now, coming to the facts of the case wherein we are required to call upon to exercise our inherent powers, it is the prosecution story that the informant while undertaking treatment in Government Hospital, gave report that he was proceeding in Tractor bearing No.MH-13-AJ-1832 around 4.00 p.m. on 27th March 2015 to dump the cow dung in a field. He was proceeding from the field of one Sahadev Mahadev Thorbole. At that time one Dattatray Kondiba Thorbole i.e. accused No.4 came there and asked him not to take the tractor contending that there is a water channel belonging to them on the route. He then abused the informant. The other accused persons, who were nearby, came there. Accused No.4 had assaulted the informant with stick on his head causing bleeding injury. Accused No.2 Ashruba assaulted informant with stick on his left arm and wrist. Accused No.3 Rekha assaulted the informant with stone on the back of the informant. When informant's brother Laxman came to rescue him, at that time accused No.1 Vikas had assaulted the brother with axe causing injury to the left cheek. The brother was also

assaulted by accused No.3. Informant's brother Laxman sustained fracture to the cheek bone. Here, we are taking note of the fact that the medical officer who was examined before the trial Judge, has certified that the injuries were grievous and also caused due to sharp, dangerous weapon.

10. However, it is to be noted that the dispute arose when informant tried to take his Tractor from the field where according to the accused persons there was their water channel. As per the guidelines in *Ramgopal and another vs. the State of Madhya Pradesh* (supra), it can be seen that now there is voluntariness of compromise between the accused and the informant, victim. They have reiterated that they want to keep good relations herein after and by entering into compromise they want to avoid bitter relationship between the families as they are stated to be distantly related. The verification regarding the compromise has been done by the Registrar (Judicial) and report has been submitted. Certainly, in view of the Full Bench decision of this Court in *Maya Sanjay Khandare vs. State of Maharashtra* (supra), this can be considered as a rarest of the rare case and in order to do complete justice, case is made out for exercise of

inherent powers of this Court under Section 482 of the Code of Criminal Procedure. However, at the same time we would impose cost of Rs.40,000/- (Rupees Forty Thousand) on the applicants for utilizing the entire machinery.

11. As regards the cost amount to be deposited is concerned, we are considering the Judgment of the learned Single Bench of this Court in *Writ Petition No.2318 of 2019 (Minakshi Chitra Mandir vs, the State of Maharashtra and others)*, decided on 6th March 2023, wherein note was taken of the medical dispensary available at the High Court, which is run by the State has basic facilities but it is not able to cope up with the emergent situations for want of some necessary machinery. Note was taken that if a person suddenly suffers from heart attack in the High Court premises, then it would take at least forty five minutes to transport such person to the nearest hospital and therefore, in the said case a three members Committee, consisting of the President of the Bar Association of High Court, Aurangabad, Dr. Sanjay Varade, Medical Officer of the High Court Medical Dispensary and Registrar (Administration) of the High Court Bench at Aurangabad was constituted. The Registry was

entrusted to receive the payment byway of cost and then to make payment of the machinery or any other instrument purchased, as per the directions of the Committee. We would utilize the said facility / order by which the Committee was created and direct the applicants to deposit the cost with the Registry, with this Committee.

12. In view of the above-said observations, following order is passed:-

ORDER

(I) The Application is hereby allowed.

(II) Applicant Nos.1 to 4 and respondent Nos. 2 and 3 are allowed to compound the offence. Consequently, we quash and set aside the conviction of the applicants in Regular Criminal Case No.62 of 2015 by the learned Judicial Magistrate First Class, Washi, District-Osmanabad dated 3rd May 2021 for the offence punishable under Sections 326, 324 read with Section 34 of the Indian Penal Code.

(III) Consequently, Criminal Appeal No.9 of 2021 pending before the learned Additional Sessions

Judge, Bhoom, District-Osmanabad stands disposed of.

(IV) It appears that an amount of Rs.4800/- has been deposited by the applicants with Washi Court towards the fine amount that was imposed. It is directed to be confiscated / credited to the Government.

(V) The applicants to deposit cost of Rs.40,000/- (Rupees Forty Thousand only) with the Registry i.e. the Committee as indicated in Paragraph No.11, on or before 9th September 2024. After the deposit of the said amount, the Committee is at liberty to utilize the said amount for purchase of articles / instruments useful for the patients visiting the Medical Dispensary situated in the High Court premises.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG24