



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

CRIMINAL APPLICATION NO.2546 OF 2023

- 1) Matin Gaffar Shaikh,
Age-34 years, Occu:Business,
R/o-Indiranagar, Kothi,
Ahmednagar, District-Ahmednagar,
- 2) Mobin Gaffar Shaikh,
Age-29 years, Occu:Business,
R/o-Indiranagar, Kothi,
Ahmednagar, District-Ahmednagar.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Kotwali Police Station, Ahmednagar
District-Ahmednagar
- 2) Wasim Ajij Shaikh,
Age-25 years, Occu:Business,
R/o-Zendigate, Ahmednagar,
District-Ahmednagar.

...RESPONDENTS

...
Mr. Shaikh Mazhar A. Jahagirdar Advocate for Applicants.
Mr. S.V. Hange, A.P.P. for Respondent No.1.
Mr. N.S. Jaju Advocate for Respondent No.2.
...

**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 Additional Sessions Judge, Ahmednagar in Sessions Case No.130 of 2013 on 24th March 2021, thereby applicant Nos.1 and 2 were convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code and Section 323 read with Section 34 of the Indian Penal Code. Criminal Appeal No.209 of 2021 is filed by the applicants challenging the said conviction and the same is pending before this Court (learned Single Bench).

3. Learned Advocate for the applicants and respondent No.2 are submitting that though after the full-fledged trial before the learned Additional Sessions Judge the applicants are convicted, yet now during the pendency of the appeal, due to the intervention of the elderly persons, relatives, compromise has

taken place. Respondent No.2 has filed the affidavit-in-reply. He reiterates that he has filed the said affidavit without there being any coercion or misrepresentation on the part of the applicants on him. He reiterates that he wants to keep the relationship in future since they are resident of the same vicinity. He also submits that in the cross case bearing Sessions Case No.7 of 2018 decided by the same Additional Sessions Judge on the same day, wherein he was accused, he came to be acquitted from the offence punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code.

4. Learned Advocate for the applicants and learned Advocate for respondent No.2 submits that the conviction be quashed and set aside.

5. Per contra, the learned APP strongly opposes the application and submits that the prosecution had examined in all seven witnesses to bring home the guilt of the accused persons. Grievous injuries were caused to respondent No.2 and witness. The weapons those were used were iron rod and wooden cudgel. The medical officer who was examined to prove those injuries,

has opined that when injured Wasim was taken to the hospital, he was in unconscious state and was having history of vomiting. He found CLW on left parietal region measuring 5 X 2 1 cm. X-ray and CT Scan showed that the patient was having subdural hemorrhage and therefore, the patient was referred to Sasoon Hospital for further treatment. In the cross-examination, this medical witness has stated that if surgery would not have been performed then the injury would have been fatal. Therefore, the ingredients of the offence under which the charge was framed, were proved beyond reasonable doubt. Now, in the affidavit-in-reply, respondent No.2 accepts that he has received an amount of Rs.10,00,000/- from the applicants. Thus, it will not be, therefore, proper that upon receipt of amount the conviction gets set aside. This would give a wrong message in the public. Therefore, inherent powers should not be used in the present case.

6. 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.

7. 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.....”

8. 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.”

9. 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.

10. 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 one Kalim Jahagirdar lodged a report (who appears to be not an injured person). According to his report, around 8.45 p.m. on 27th April 2012 he had gone to the Chinese Cart serving food, which is run by the accused persons. He has gone along with Kalil Sayyad, Wasim Shaikh and Juber Shaikh in Omni Van. They stopped the Van near the cart whereupon the informant gave order for two chicken rice. That order was placed on the food stall of accused Mobin. Thereafter informant went to the hand cart of accused Matin and placed the order for chicken lollipop. When he was chitchatting with his friend, injured Wasim

came and asked as to what has happened their order of Lollipop. Thereupon accused Matin got annoyed and slapped to Wasim. Informant asked as to why he slapped to Wasim. Matin replied that Wasim has unnecessarily spoken about the order and thereupon he got annoyed. Thereafter informant and his friends took Wasim to another food stall. Then accused Momin armed with iron rod, accused Matin armed with wooden cudgel came at the spot and gave blow of iron rod on the head of Wasim. Informant tried to rescue Wasim. At that time Matin assaulted him with wooden cudgel. Wasim was assaulted by both the accused with iron rod and wooden cudgel. Wasim sustained injuries to his head. Informant sustained injury to his left arm. Then Wasim was taken to the civil hospital.

11. Thus, it is to be noted from this story that it was not the premeditated act and it appears that it took off in a spur of moment. Another fact to be noted is that when the trial took place, it was totally against three persons. Out of them only present two applicants came to be convicted. It also appears that there was a cross sessions case, wherein the informant and the injured were accused and faced the trial for the offence

punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code. The learned Sessions Judge, in his Judgment, has not even taken note of the cross case. Now the dispute has been settled. No doubt the applicants have paid an amount of Rs.10,00,000/- by way of cheque to injured Wasim, which is stated to be for the medical expenses which were required to be borne by him i.e. by way of compensation. We certainly agree that merely by payment of compensation a person cannot get rid of the conviction which has been awarded after a full-fledged trial. But herein this case, the Appeal is pending before this Court itself and there is order attached in this proceedings which is passed by the learned Single Judge whereby, pending the Appeal, the substantive sentence of imprisonment imposed by the trial trial Court was suspended. The observations therein are also taken note of now.

12. 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 residing in same vicinity. 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. In addition, we may also observe here that the main point that was before this Court in the Appeal was, as to whether there was intention to commit murder of Wasim. Even after taking note of the medical evidence, especially the statement in the cross-examination, yet that cannot be the only criteria to come to a conclusion about the intention. In the event this Court would have come to the conclusion that offence under Section 307 of the Indian Penal Code is not made out, then it would have gone down to Section 326, wherein also no doubt the maximum punishment is imprisonment for life. But there could have been a possibility of reduction of sentence. Both the accused were arrested on 28th April 2012 and were in jail till 23rd May 2012. Therefore, that is one additional circumstance which we are considering for exercising our inherent powers. However, at the same time

taking into consideration the injury that has been sustained to the injured and the facts of the case, we are of the opinion that cost is required to be imposed to the extent of Rs.1,00,000/- (Rupees One Lakh only) on the applicants for utilizing the entire machinery.

13. 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.

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

ORDER

(I) The Application is hereby allowed.

(II) Applicant Nos.1 and 2 and respondent No.2 are allowed to compound the offence. Consequently, we quash and set aside the conviction of the applicants in Sessions Case No.130 of 2013 by the learned Additional Sessions Judge, Ahmednagar dated 24th March 2021 for the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code and Section 323 read with Section 34 of the Indian Penal Code.

(III) Consequently, Criminal Appeal No.209 of 2021 pending before the learned Single Judge of this Court stands disposed of.

(IV) It appears that the fine amount that was imposed, has been deposited by the applicants with Sessions Court, Ahmednagar. It is directed to be confiscated / credited to the Government.

(V) The applicants to deposit cost of Rs.1,00,000/- (Rupees One Lakh 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