



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

CRI. APPLN. (APL) NO. 812 OF 2024

Abdul Nadeem Abdul Majeed

-Vs.-

State of Mah., thr. PSO, PS City Nagpuri Gate, Amravati and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders,
or directions and the Registrar's orders.

Court's or Judge's Orders.

Mr. S.P.Bhandarkar, Adv. for the applicant.
Mrs.S.S.Jachak, APP for non-applicant No.1.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

CLOSED ON : 20TH DECEMBER, 2024

PRONOUNCED ON : 13th JANUARY, 2025

(Per : Avinash G. Gharote, J.)

1. The application seeks to quash and set aside the conviction and sentence awarded to the applicant vide judgment dated 30/04/2012, passed by the learned Additional Sessions Judge-2, Amravati in Sessions Trial No.140/2010 in Crime No.85/2009 registered with P. S. Nagpuri Gate, Amravati.

2. Mr. Bhandarkar, learned counsel for the applicant, submits that since there has been a settlement between the informant and the applicant, the present application, needs to be allowed. He submits, that the doctrine of reformation, as enunciated in **Karamjit Singh v. State (Delhi Admn.)**, (2001) 9 SCC 161 (Para 7) needs to

be applied and since there is only a sentence of 11 months remaining to be undergone, the conviction and sentence awarded needs to be quashed. In the alternative it is claimed that the applicant be released on the basis of sentence already undergone as according to him, the further incarceration of the applicant would amount to an abuse of the process of law.

3. Learned APP opposes the submission and contends that such a course of action is not permissible in law.

4. What is necessary to note, is that the applicant was convicted by the learned Sessions Court by the judgment dated 30/04/2012 in Sessions Trial No.140/2010, for the offence punishable under section 307 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment (RI) for five years; convicted for the offence punishable under section 332 of the IPC and sentenced to suffer RI for two years; and convicted for the offence punishable under section 279 of the IPC and sentenced to suffer RI for six months, substantive sentences to run concurrently (Pg.31). This conviction of the applicant was challenged in Criminal Appeal No.199 of 2012 before this Court in which by the judgment dated 03/10/2022, the appeal filed by the applicant came to be dismissed maintaining the conviction and sentence. The Special Leave Petition (Criminal) Diary No.1722 of 2023 filed by the applicant before the Hon'ble Apex Court came to be dismissed by the order dated 07/02/2023 (Pg.122).

5. The question whether in a prosecution which had

culminated in a conviction whether the power under section 482 of the Cr.P.C. ought to be exercised for quashing the prosecution/conviction altogether, instead of maintaining it and considering the issue of modification of the sentence, upon a settlement between the convict and the victim/complainant was decided by a learned Full Bench of this Court in **Maya v. State of Maharashtra, 2021 (1) Mh.L.J. 613**, in the following terms:

33. “While answering Question (A) we may observe in the light of the settled legal position as under:

At the conclusion of the criminal trial the Court on finding the evidence on record led by the prosecution to be sufficient to prove the guilt of the accused would proceed to convict the accused. The remedy of challenging the order of conviction is available to the accused by way of an appeal. Any compromise entered into post-conviction for a non-compoundable offence cannot by itself result in acquittal of the accused. Similarly, the Court has no power to compound any offence that is non-compoundable and not permitted to be compounded under Section 320 of the Code. The compromise entered into therefore is just a mitigating factor that can be taken into account while hearing the appeal/revision challenging the conviction and which factor has to be taken into consideration while imposing appropriate punishment/sentence. It is not permissible to set aside the judgment of conviction at the appellate/ revisional stage only on the ground that the parties have entered into a compromise. In a given case the appellate Court/revisional Court also has the option of not accepting the compromise. Thus if the judgment of conviction cannot be set aside in an appeal/revision only on the ground that the parties have entered into a compromise similar result cannot be obtained in a proceeding under Section 482 of the Code.

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. To illustrate, where a jurisdictional issue going to the root of the matter is raised for challenging the conviction or in matrimonial disputes where the parties have agreed to settle their differences, jurisdiction under Section 482 of the Code could be exercised. Such exercise of jurisdiction should be limited to the rarest of rare cases when found necessary to prevent the abuse of the process of the Court or to secure the ends of justice. Thus while holding that inherent power under Section 482 of the Code could be exercised for quashing criminal proceedings even at the appellate/revisional stage as held in *Kiran T. Ingale* (supra) such exercise of jurisdiction should be limited to the extent stated hereinabove. The ratio of the decision in *Kiran T. Ingale* (supra) has to be applied subject to aforesaid limitations. Further, the expression "criminal proceedings" would cover the entire journey of the proceedings commencing from its initiation till the proceedings culminate giving it seal of finality. Question (A) is answered accordingly."

What is also material to note, is that while answering the aforesaid question, the fact that the conviction and sentence was maintained by the Hon'ble

Apex Court, was not under consideration therein. That however would not mean that the Court would be denuded of its power under Sec.482 Cr.P.C. to quash the proceedings, however, special circumstances, in addition to the compromise will have to be demonstrated. The position in this regard has been considered by the hon'ble Apex Court, in **Ramgopal and another v. State of M.P., (2022) 14 SCC 531** in which the following principles have been laid down:

“19. We thus sum up and hold that as opposed to Section 320 CrPC where the Court is squarely guided by the compromise between the parties in respect of offences “compoundable” within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 CrPC or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 CrPC. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind:

- 19.1. Nature and effect of the offence on the conscience of the society;
- 19.2. Seriousness of the injury, if any;
- 19.3. Voluntary nature of compromise between the accused and the victim; and
- 19.4. Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

In ***H. N. Pandakumar v. State of Karnataka***, Misc. Application No.2667/2024 in SLP (Cri) No.895/2024, decided on 07/01/2025, while considering a similar plea, the Hon'ble Apex Court, while allowing the application and reducing the sentence to the period already undergone, in respect of a conviction under section 326 of the IPC, has

considered not only the compromise, but also the special circumstances as indicated in para 4 therein of other disputes between the two families having been settled, compensation being paid, the parties being neighbors, etc.

6. The factuality in the present matter as can be seen from the judgment of the learned Sessions Court is that on 26/07/2009, at around 22.00 hours, Assistant Sub Inspector Suresh Sharma, who was attached to Police Station Nagpuri Gate Amravati and was on night duty had received a message at the Police Station that Truck No.MH-31/W-2663 was coming with high speed from Itwara Bazar towards Nagpuri Gate and had received directions to stop the truck by doing nakabnadi, in pursuance to which he along with PSI Pande and others went to Nagpuri Gate Square, where they saw the aforesaid truck coming in high speed. Signals were given to truck to stop, but the truck driver drove the truck over them with intent to kill them in which ASI Suresh Sharma, though he tried to save himself, he fell down and tyre of the truck rolled over his left leg due to which he received injury. The truck did not stop, but ran away towards Jamil Colony. A chase was given and ultimately it was stopped near Jamil Colony and it was found that the applicant was in the driver's seat and was taken into custody. This would clearly indicate, that the applicant, is a person, who has no regard, either for the law or for human life, for had it been so, he would have stopped the truck upon the signal being received in that regard, so that the subsequent incident would not have occurred. In fact, even after running over ASI Suresh

Sharma the applicant did not stop, but was chased and apprehended.

7. All that has been averred, in the instant matter, is that there has been a compromise between the applicant and the legal heirs of the original complainant ASI Suresh Nilkanth Sharma, who passed away on 26/12/2017, which legal heirs have been arrayed as non-applicants 2(A) to 2(C) and have not appeared even though served.

8. That considering the factuality of the position regarding the incident as narrated above and the absence of any special circumstances and the non-appearance of the non-applicants 2(A) to 2(c), in this application, in spite of service, to support the claim of the applicant, would clearly indicate that even on merits, this is not a fit case for the exercise of the power under section 482 of the Cr.P.C. even in terms, of what has been held in *Ramgopal and another v. State of M.P.* (supra) and *H. N. Pandakumar v. State of Karnataka* (supra).

9. That apart, nothing has been brought to our notice, so as to arrive at a conclusion, that the present matter can be categorized as one of the rarest of the rare cases, as indicated by the learned Full Bench in para-33 above, capable of being considered for being taken up under section 482 of the Cr.P.C. for quashing the conviction and sentence on account of a settlement.

7. The theory of reformation in *Karamjit Singh v. State* (supra) which is being relied upon holds as under :

Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. It is keeping in mind the reformatory theory, as enunciated above, that the principles of exercise of powers under section 482 have been culled out by the Hon'ble Apex Court in **Ramgopal and another v. State of M.P.** (supra) and **H. N. Pandakumar / State of Karnataka** (supra), which indicate that apart a mere settlement,

special circumstances have to be pointed out, for the exercise of the power. As held above no such special circumstances have been pointed out, apart from which the non-applicants 2 (a) to 2(c), have not even appeared in this Court, in spite of service to support the factum of a settlement and what has been stated in the affidavit dated 12/04/2024, in view of which the above, the application stands dismissed.

(ABHAY J. MANTRI, J) (AVINASH G. GHAROTE, J)