

(2021) 01 CHH CK 0011

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 1030 Of 2018

Bajrang Yadav And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Jan. 12, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 148, 149, 326, 506
- Code Of Criminal Procedure, 1973 - Section 320, 374, 482

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Ravindra Sharma, Aditya Pandey, Ravi Bhagat

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioners herein have been convicted for offences punishable under Sections 148, 506 Part-II, 326 read with Section 149 of IPC and have awarded sentence appropriately by the Jurisdictional Magistrate First Class, Champa vide judgment dated 24/02/2018 against which they preferred criminal appeal under Section 374 of CrPC before the Session Judge, Janjgir, Distt. Janjgir Champa in which the sentence awarded to them has been suspended and they have been admitted to the privilege of bail and their substantive criminal appeal is pending consideration before the Court of Sessions.

2. It is the case of the petitioners that during the pendency of the criminal appeal, the petitioners and respondents No. 2 and 3 have settled their dispute

amicably and therefore, the judgment of conviction recorded by the trial Magistrate and the sentence awarded to the petitioners deserves to be set aside and they be acquitted of all the charges.

1 Respondents No. 2 and 3 have filed their return supporting the petitioners and Respondent No. 1/State has filed its return opposing the prayer made by the petitioners.

1 Mr. Ravindra Sharma, learned counsel for the petitioners, would submit that since the petitioners have settled their dispute amicably with respondents No. 2 and 3, therefore on the basis of compromise, the impugned judgment of conviction recorded and sentence awarded to the petitioners deserves to be set aside and the petitioners be acquitted of all the charges, which in turn was supported by Mr. Aditya Pandey, learned counsel for respondents No. 2 and 3.

1 Mr. Ravi Bhagat, learned State counsel, would submit that the judgment of conviction passed by the trial Magistrate and the sentence awarded to the petitioners therein cannot be set aside by this Court in exercise of the power conferred under Section 482 of CrPC in view of the decision rendered recently by the Bombay High Court (Nagpur Bench) in the matter of Sau. Maya Sanjay Khandare & Anr. v. State of

Maharashtra Criminal Application (APL) No. 709/2020 decided on 05/01/2021.

6. I have heard learned counsel for the parties, considered their rival submissions made herein- above and perused the record with utmost circumspection.

7. The question for consideration in this petition is, whether in a petition under Section 482 of CrPC on behalf of the convict of a non- compoundable offence(s), during the pendency of his criminal appeal, can be set aside on account of settlement between the convict and the complainant ?

8. The question as to whether the jurisdiction under Section 482 of CrPC can be exercised by this Court for quashing the judgment of conviction recorded by the trial Magistrate during the pendency of the appeal came up for consideration recently before the Bombay High Court (Nagpur Bench) in the matter of Sau. Maya Sanjay Khandare (supra) wherein the following question of law was framed in paragraph 11 of the

judgment :-

â€œQuestion (A) : In a prosecution which has culminated in a conviction, whether the power u/s 482 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 ?â€

2 Their Lordships considered the issue and answered the aforesaid question in paragraph 33 of the judgment and held that the jurisdiction of Section 482 of CrPC ordinarily cannot be exercised for setting aside conviction during the pendency of the appeal except in exceptional circumstances, which states as under :-

â€œ33. 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 opinion 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 Tulshiram Ingale v. Anupama P. Gaikwad and Ors. 2006 (2) Mh.L.J.(Cri) 402 such exercise of 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.

10. Their Lordships also considered the decisions of the Supreme Court in this regard and further held that the effect of settlement thereafter is to

maintain the conviction as recorded but to reduce the sentence imposed for commission of such non-compoundable offence and further held that the

compromise post conviction for a non- compoundable offence ipso-facto cannot result in acquittal of convict and compromise is one amongst various

factors to be considered while imposing appropriate sentence when the conviction is liable to be maintained on examining the merits of the case. I am

in full agreement with the view so expressed by the Bombay High Court in Maya Sanjay Khandare (supra).

4 Reverting to the facts of the present case in light of the legal position noticed herein- above, no exceptional circumstances have been pointed out by

the petitioners except stating that the dispute has been settled amicably between them and respondents No. 2 and 3 and in order to maintain good

relations, they have compromised the matter, as such, the petitioners have failed to make out any case in terms of the judgment rendered by the

Bombay High Court (Nagpur Bench) in Maya Sanjay Khandare (supra). Accordingly, I do not find it a fit case for setting aside the impugned

judgment of conviction passed by the trial Magistrate on the basis of compromise between the parties. However, the effect of the compromise will be

considered by the appellate Court at the time of the judgment particularly, if the conviction is sustained while considering the quantum of the sentence

by the Court of sessions and imposing appropriate sentence.

(l) With the aforesaid observations, the instant writ petition under Section 482 of CrPC stands dismissed. No cost(s).