

(2020) 02 BOM CK 0114

In the Bombay High Court

Case No : Criminal Application (Apl) No. 1028 Of 2019

Shivaji And Anr

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 323, 354, 452, 506

Citation : (2020) 02 BOM CK 0114

Hon'ble Judges : Sunil B. Shukre, J;Madhav J. Jamdar, J

Bench : Division Bench

Advocate : A.V. Gupta, Piyush S. Girdekar, S.A. Ashirgade

Final Decision : Disposed Of

Judgement

Sunil B. Shukre, J

1. Heard. Admit. Heard forthwith finally by consent of the learned counsel for the parties.

2. There is preliminary objection taken on behalf of the respondent/State to the maintainability of the application. It is argued that powers of this Court

under Section 482 of the Code of Criminal Procedure for the purpose of quashing of FIR and criminal proceedings cannot be invoked at a stage when

the criminal proceedings have led to conviction of the accused of the offence disclosed by the FIR filed against him by the complainant.

3. Mr. Gupta, learned Sr. Advocate for the applicants submits that the issue is no longer res-integra as such an application has been held to be

maintainable by Division Bench of this Court in the case of Kiran Tulshiram Ingale vs. Anupama P. Gaikwad and Ors. reported in 2006 CrLJ4591,

2007 (2) RCR (Criminal) 842.

4. This application has been jointly filed by the accused (applicant No.1) and the complainant (applicant No.2). The applicant No.2 had made a complaint against applicant No.1 about the criminal trespass and outraging of her modesty by applicant No.1. The Applicant No.1 was prosecuted for offences punishable under Sections 452, 354, 323, 506 of IPC in Regular Criminal Case No.184/2011. He was found guilty of all these offences and was sentenced to suffer rigorous imprisonment of varying nature as per the judgment and order delivered on 30.08.2016 by the Court of Judicial Magistrate First Class, Murtizapur, District Akola. The matter was carried in appeal before concerned Sessions Court and there also conviction and sentence of applicant No.1 was maintained. Now revision challenging the concurrent findings of has been filed by applicant No.2 and it is pending before learned Single Judge of this Court.

5. As regards the maintainability of the application, we can say that the law has already been settled by Division Bench of this Court. This very issue, which was referred for adjudication to the Division Bench by learned Single Judge of this Court has been considered and adjudicated upon by giving a positive answer. The judgment rendered in the case of Kiran Tulshiram Ingale vs. Anupama P. Gaikwad and Ors. (supra) gives detailed reasons for the opinion expressed by the Division Bench and the issue has been answered as in the affirmative.

6. The Division Bench has found that when the parties, after conviction, have compromised and the object of compromise is to live happily, peacefully though separately after divorce, there should be no reason for the Court to come in between the decision mutually taken by the parties. The Division Bench has found that conviction by the First Court is not an end of the matter and even an appeal therefrom being continuation of the proceeding resulting in confirmation of the sentence would not take away the power of the Court to intervene and quash the proceeding in exercise of its inherent power under Section 482 Cr.P.C. The bench spoke in same vein even about a pending revision application filed after dismissal of appeal thereby confirming conviction. The Division Bench has further reasoned that the Honâ??ble Apex Court, as seen from its observations made in the case of B.S. Joshi Vs. State of Haryana reported in 2003 CriLJ 202,8 has appreciated this issue with a broader perspective and, therefore, the Court is

required to take a broader view of scope of power of Court under Section 482 Cr.P.C., which it took by holding as said just now. Thus, the Division

Bench of this Court answered the question regarding maintainability of an application filed under Section 482 Cr.P.C. even after conviction of the applicant as in the affirmative.

7. After the case of Kiran, Full Bench of this Court reiterated the view expressed in Kiran and thus approved it. It held that inherent power under

Section 482 Cr.P.C. having its object to prevent abuse of process of Court and or to secure ends of justice could be exercised by High Court at

any stage of the proceedings. This was in the case of Abasaheb Yadav Honmane Vs. State of Maharashtra reported in [2008 2 Mah.L.J. 856.] So

the preliminary objection as to maintainability of this application stands rejected.

8. Now, we would deal with merits of the application. Just as in the case of Kiran Tulshiram Ingale vs. Anupama P. Gaikwad and Ors. (supra) here

also the conviction of the First Court has been maintained by the concerned Sessions Court and revision is pending. Both the applicants now have

voluntarily reached a settlement in between them. Detailed reasons for reaching the settlement have been mentioned in the memo of application. Both

the applicants are personally present before the Court and they are duly identified by their learned Advocate assisting the learned Senior Advocate.

They submit that there was no pressure brought upon them by any one for amicably settling the dispute between them. They also submit that since

they are related to each other, they are interested in keeping peace in the family and maintaining cordial relations in between them. These are the very

reasons stated in the application jointly filed by the accused and the complainant.

9. From the settlement arrived at between the parties post conviction of applicant No.1 it appears that the complainant has thought it fit to introspect

and give a chance to the applicant No.1 to improve himself. Just as observed by the Division Bench of this Court in Kiran Tulshiram Ingale vs.

Anupama P. Gaikwad and Ors. (supra) that conviction of an accused is not an end of the matter and the matter can be resolved also through another

mode, we would also hold it to be so. After all conviction results in one or the other kind of punishment. The main purpose that a punishment serves

has two dimensions, one of deterrence and other of reformation of the accused. Of course, there are other purposes of punishment also as per various

theories of sentencing policy. But, they are not very significant for deciding the question involved here, the question as to why settlement between complainant and accused be accepted, especially after the conviction of the accused, as providing good reason to quash the criminal proceedings thereby virtually setting aside the conviction, in exercise of inherent power of the High Court under Section 482 Cr.P.C.? Of all these purposes, in our opinion, reformation of an offender is most crucial to answer the question. Reason being that it stands as a reasonable assurance to society that the offender is very unlikely to repeat the crime and it is this assurance which helps the offender in returning to normal fold of the society and be a useful member of the society. This purpose can be served also by other forms of punishment, like penance, atonement or by self-realization. Here, applicant no. 1 has shown extreme repentance on his part and has assured to not repeat the mistake and at the same time, applicant no. 2, the victim of crime, has also decided to pardon the applicant no. 1 of his sin. So, here there is a combination of self realization and repentance by the accused and pardon given to him by the complainant consciously. This combination would show that there is sufficient cause present here to enable us to accept the settlement reached by the parties as one that effectively puts a quietus to their internecine dispute once and for all, thereby serving best interests of both of them and we do accept the settlement to be so. This would lead us to invoke our inherent power under Section 482 Cr.P.C. to interfere in the criminal proceedings to secure the ends of justice, and we do so.

11. Before parting with the judgment, we place on record our appreciation for the valuable assistance given to the Court by Mr. A.V. Gupta, learned Senior Advocate, Mr. Piyush S. Girdekar, learned Junior Advocates and Mr. S. A. Ashirgade, learned Addl. P.P. in effectively deciding this application.

12. The application is allowed in terms of prayer clauses (i) and (ii) subject to the condition that applicant No.1 shall deposit an amount of Rs.30,000/- (Rupees Thirty Thousand Only) in the account of Public Prosecutor, Bombay High Court, Nagpur Bench, Nagpur for the purpose of development of library including digital library, installation of server and digitalization of library within a period of three weeks from the date of receipt of the order, failing which this order shall stand automatically cancelled and this Criminal

Application shall stand restored to the file of this Court for fresh hearing and disposal, in accordance with law.