
(1968) 07 BOM CK 0012

In the Bombay High Court

Case No : Criminal Appeal No's. 238 and 240 of 1968

The State of Maharashtra

APPELLANT

Vs

Bherulal Dagadulal Jain

RESPONDENT

Date of Decision : 03-07-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 141, 143, 146, 147, 148

Citation : (1968) 70 BOMLR 694

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vaidya, J.—The State has filed the above appeals against the orders of acquittal passed by the Judicial Magistrate, First Class, Manmad, on October 28, 1967, in two criminal cases before him, both of which related to an incident which took place at about 7-30 p.m. on October 7, 1966, in Manmad. The first information in one case was given by one Zumbarlal Rajmal Chajed and the first information in the other case was given by one Parasmal Mesulal Jain relating to the said incident. As these two appeals relate to the same incident and involve a common question of law, they can be disposed of by a single judgment.

2. Criminal Appeal No. 238 of 1968 arises out of Criminal case No. 778 of 1966 before the said Magistrate. A chargesheet was filed before him on October 15, 1966, against the seven respondents in that appeal, viz., (1) Bherulal Dagdulal Jain, (2) Kantilal Dagdulal Bardiya, (3) Madanlal Panalal Bardiya, (4) Dharmachand Dagduram Bardiya, (5) Parasmal Bherulal Bardiya, (6) Balu Kondaji Karde and (7) Shridhar Waman Paliwal. It was alleged in the said chargesheet by the Police Sub-Inspector, Manmad city, that on October 7, 1966, at 7-30 p.m., the seven accused formed an unlawful assembly in an open street of Manmad city inasmuch as, as a result of a meeting of a bank, they entertained a common object of beating the complainant Zumbarlal Rajmal Chajed and witness Amarchand Babulal Chajed, Manakchand Rajmal Chajed and Motilal Rajmal

Chajed and in pursuance of that common object, they voluntarily caused injuries to them with blows and kicks and with wooden pieces and bamboo sticks and also abused them and threatened to kill them and thereby committed offences under Sections 147, 148, 323, 504 and 506 of the Indian Penal Code. The Judicial Magistrate, First Class, Manmad issued process on perusal of the charge-sheet and made it returnable on October 29, 1966. On October 29, 1966, the accused were present in Court, but an application was made for adjournment and the case was adjourned to November 23, 1966. Thereafter the case was adjourned from time to time for various reasons till March 17, 1967, when the parties filed an application exh. 15 signed by the complainant Zumbarlal, the seven accused persons and the witnesses who were alleged to have been hurt in the course of riot. This application was objected to on behalf of the prosecution on the ground that by law, partial compounding was not allowed and if the parties wanted withdrawal, they should move the District Magistrate in respect of the offences mentioned in the charge-sheet. The Judicial Magistrate, however, passed the following order on that very day:

Application is allowed. Accused are acquitted of the offences under sections 323, 504 "and 506 of the Indian Penal Code.

It may be noted here that in the application exh. 15 the complainant, the accused and the witnesses referred to above had mentioned that the compromise was arrived at as a result of the efforts of many gentlemen and leaders. It also stated that the signatories to exh. 15 belonged to merchant class and respectable families and as a result of this compromise, the relations among them were as they were before the incident and had become very harmonious and peaceful. They had to meet each other every day in connection with business and with a view to maintain good relations, the purshis was being filed for compounding the offences under Sections 323, 504 and 506. Thereafter the case was adjourned to March 81, 1967 and further adjourned to April 14, 1967. On April 14, 1967, the accused filed an application exh. 17 for adjournment of the case stating that they had applied to the District Magistrate for withdrawing the case and that application was not decided. The case appears to have been adjourned further for awaiting the orders of the District Magistrate till August 4, 1967. It is most regrettable that the District Magistrate does not appear to have passed any order with regard to the withdrawal inspite of the waiting by the parties and the Court for more than four months. On August 4, 1967, the Judicial Magistrate who had succeeded the previous Judicial Magistrate framed a charge against the seven accused u/s 148 of the Indian Penal Code, the material portion of which was as under:

That you on or about the 7-10-60 at 7-30 P.M. at Manmad were members of an unlawful assembly and did in prosecution of common object of such assembly, viz., to cause hurt to Zumbarlal Chhajed, committed the offence of rioting and at that time were armed with deadly weapons and thereby committed an offence punishable u/s 148 of the Indian Penal Code....

The accused pleaded not guilty to the said charge. After framing the charge, the case was adjourned from time to time till September 20, 1967, when prosecution witness No. 1 Zumbarlal, the complainant, was examined as a witness. He proved his first information before the police at exh. 26. Immediately after his evidence was recorded, an application was filed by the pleader for the accused submitting as under:

The police have charge sheeted the accused under sections 147, 323, 504, 506, 34, I.P.C. Except u/s 147, I.P.C., the offences under other sections are compoundable and are compounded. The complainant has averred that he has compounded the offence u/s 147, I.P.C. also. He does not intend to proceed with the trial. The technicality of non-Compound ability of offence u/s 147 is set at rest by a ruling quoted in 1964 (2) Criminal Law Journal 111. It is therefore requested that the accused may please be acquitted.

This application was resisted on behalf of the prosecution on several grounds. It was contended that the accused being charged u/s 148 of the Indian Penal Code, the acquittal of the accused in respect of compoundable offence would not bar a trial of the accused u/s 148 of the Indian Penal Code. It was also contended that it would be against public policy and public interest to permit the compounding of the offence and it was, therefore, prayed that the prosecution should be given an opportunity to lead evidence against the accused. The learned Magistrate, however, overruled the objections on behalf of the prosecution and following the decision of the Patna High Court in *Ramphal v. State of Bihar* (1964) 2 Cr. L. J. 111, came to the conclusion that since the main offences were compounded, there could not be a trial of the offence u/s 148, Indian Penal Code. He also relied on a judgment of the Assistant Judge of Nasik which was cited before him. He concluded that the offence u/s 148, Indian Penal Code must fail as the main offences have been compounded. He, therefore, acquitted accused Nos. 1 to 7 of the offence u/s 148 of the Indian Penal Code.

3. In Criminal Appeal No. 240 of 1948 also the charge-sheet was filed on October 15, 1966, against the seven accused, viz., (1) Amarchand Babulal Chajed, (2) Babulal Rajmal Chajed, (3) Zumbarlal Rajmal Chajed, (4) Manakchand Rajmal Chajed, (5) Motilal Rajmal Chajed, (6) Bhaskar Shankar Nagare, (7) Sakharam Gopinath Barde. It may be noted that the accused Zumbarlal was the complainant in the other case. The accused Amarchand, Babulal Manakchand and Motilal were cited as witnesses in the other case. It was alleged that these seven accused on October 7, 1966, at about 7-30 p.m. beat the complainant Parasmal and witnesses Kantilal Dagduram Jain and Bherulal Dagduram Jain and caused them hurt and accused No. 1 entered in the house of the complainant and committed trespass and all these offences were committed with a common object of the accused as a result of the meeting of the bank referred to above in the other case. It was also alleged that they threatened to kill the complainant and hence the accused had committed offences under Sections 147, 148, 451, 323, 504, 506 of the Indian Penal Code. This case also took a parallel course to

the other case and an application exh. 15 was filed on March 17, 1967, i.e., on the same day on which exh. 15 was filed in the other case and with the same contents signed by the complainant, the accused and the injured witnesses who were cited in the charge-sheet. The application was opposed on the same grounds on behalf of the prosecution and the learned Magistrate on the very day passed an order as follows:

The accused are acquitted of the offences under sections 323, 504 and 506 of the Indian Penal Code.

Thereafter the case was adjourned almost on the same dates as the other case and on the very day on which the charge was framed in the case referred to above, a charge was framed against the accused in this case, the material portion of which was as follows:

That you on or about the 7-10-66 at Manmad at about 7-30 p.m. were a member of an unlawful assembly and did in prosecution of common object of such assembly viz. to cause hurt to Parasmal committed the offence of rioting and at that time were armed with deadly weapons.

At the same place and at the same time committed house trespass by entering into the building of Parasmal, used as human dwelling, in order to commit the offence of causing hurt to said Parasmal and thereby committed an offence punishable u/s 148 and 451 of the Indian Penal Code and within my cognizance.

The accused pleaded not guilty to the said charge. Thereafter an application was filed on September 20, 1967, which was similar to the application exh. 27 in the other case. By that application the accused requested that they may be acquitted in view of the decision in *Ramphal v. State of Bihar*. The application was opposed on similar grounds on behalf of the prosecution as in the other case and an order was passed by the learned Judicial Magistrate acquitting accused Nos. 1 to 7 holding that in view of the law as stated in *Ramphal v. State of Bihar*, the accused having compounded the main offences, the offence u/s 148, Indian Penal Code could not be alleged against them.

4. It is against the aforesaid orders of acquittal in the two cases that the State has filed the above two appeals. Both of them involve the common question as to whether in the facts and circumstances of the case, the Judicial Magistrate was right in holding that the charge u/s 148 must fail because the main offences alleged in the charge were compounded. Mr. Bhonsale, the Honorary Assistant Government Pleader, contends in support of the appeals that the learned Magistrate had no jurisdiction to entertain the applications for recording the compromise in respect of the offences u/s 148 of the Indian Penal Code because an offence u/s 148 was not compoundable even with the permission of the Court, He has relied on decisions of this Court in *Emperor v. Ranchhod Bawla I. L. R. (1912) 87 Bom. 369* 15 Bom. L. R. 61, *Emperor v. Asmal (1902) 4 Bom. 718* and *State v. Kamalakar P. Juvehar AIR [1960] Bom. 1674*. He has also relied on a decision of the Madras High Court in *In re Matti Venkanna ILR (1922) 40 Mad.*

257. He contends that the offence of rioting is a serious offence against public tranquillity and such an offence could not be compounded and the accused could not be allowed to be acquitted in respect of such an offence merely because the injured parties and the accused came to a private settlement or a settlement at the instance of their friends and well wishers. He argued that the applications for recording the compromise were opposed by the Police Prosecutor on behalf of the prosecution inter alia on the ground that the prosecution wanted to lead further evidence in the matter and hence the Magistrate had no jurisdiction to overrule the contentions in view of the mandatory provisions of Section 251A of the Code of Criminal Procedure.

5. As against this, the learned counsels for the accused rely on the decision of the Patna High Court in *Ramphal v. State, of Bihar* and contend that once the offence, to commit which was the object of the unlawful assembly, is compounded, no charge can be levelled against the accused in respect of the offence because u/s 345(6) of the Code of Criminal Procedure, the composition of an offence has the effect of an acquittal of an accused. It is argued that once there was an acquittal for the offences to commit which the unlawful assembly came into existence, it would not be legal to hold that respite of the composition and its effect as acquittal, the accused could be prosecuted for being members of an unlawful assembly. It is contended that the principle of *autrefois acquit* would operate and for the same offence, the same persons could not be prosecuted after the acquittal. They submit that in the facts and circumstances of the present case, the offence alleged u/s 148 of the Indian Penal Code was not distinct from the offences which were compounded and hence on the composition of those offences, the charge u/s 148 did not survive. It is, therefore, necessary to consider these contentions in the light of the above decisions and the provisions of the Code of Criminal Procedure and the facts and circumstances of the two cases from which the above two appeals have been filed.

6. In *Emperor v. Asmal*, the accused were forwarded to the Magistrate on a police report setting out offences under Sections 325 and 511 of the Indian Penal Code. The evidence taken by the Magistrate clearly disclosed an offence u/s 148. The complainant applied to withdraw the case on the ground that some of the witnesses had turned round. The Magistrate allowed the offence to be compounded and it was held by *Crowe and Aston, JJ.*, that the Magistrate had no authority to allow the offence to be compounded and to usurp the jurisdiction not vested in him by law as the offence disclosed was not compoundable u/s 345 of the Criminal Procedure Code. It was also pointed out in that case that in fact the offences were not compounded. No question arose in that case as to whether a charge u/s 148 could be framed after the composition of offences alleged to have been committed in the course of the rioting. The evidence in the case disclosed an offence u/s 148 which was not compoundable and hence, with respect, the order of the Magistrate permitting the composition was rightly set aside. However, there is nothing in that case which is relevant for the purpose of deciding the question involved in the present appeals, particularly because in

that ease it was found that in fact there was no composition.

7. In *Emperor v. Ranchhod Bawla*, the question which arose for decision was, as stated by Batchelor J. "whether in a warrant case in respect of a non-compoundable offence it is competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal." This Court held that it was not so competent. The facts in that particular case were that a complaint was made to the police accusing certain persons of the offence of criminal breach of trust punishable u/s 406 of the Indian Penal Code. The police after enquiry committed the accused persons for trial to the Magistrate's Court. The complainant was examined and the trial was postponed and on the postponed date, the complainant applied to the Magistrate to allow him to withdraw from the case. He urged that the accused persons were his labourers, that they had agreed to restore the property which he had accused them of misappropriating and that as the rainy season was approaching, he was unwilling to proceed. Thereupon the Magistrate made an order to the effect that the complainant was allowed to withdraw the case and the accused were acquitted u/s 258 of the Criminal Procedure Code. This Court took the view that the order passed by the Magistrate was unwarranted by any provisions of the Criminal Procedure Code because the offence was a non-compoundable offence and the only sections which contemplate the termination of a criminal prosecution by private arrangement were Sections 248 and 345. But since the offence was not an offence triable as a summons case, Section 248 did not apply. Section 345 also did not apply because the offence was not compoundable. This Court also observed that the only means by which an order of acquittal could legally be arrived at under chapter XXI applicable to a warrant case was u/s 258, that is to say, an order of acquittal could be pronounced only where after the framing of a charge the Magistrate was of opinion that the evidence was insufficient to justify a conviction. In that case, however, no charge was framed and the Magistrate instead of exercising his own mind upon the evidence in the case, allowed the decision to be taken out of his hands by a private arrangement between the persons interested. That decision is an authority for the proposition that in a warrant case, no order of acquittal could be passed unless a charge was framed and the accused could not be acquitted in respect of a non-compoundable offence merely because the complainant chose not to proceed with the matter. The said decision is binding on me and it is clear that if the Magistrate was justified in framing the charges u/s 148 in the two cases, he had no jurisdiction to order an acquittal in respect of the said charges without giving an opportunity to the prosecution to lead all the evidence which the prosecution intended to lead. The Magistrate had no authority to stop the Prosecutor from leading further evidence by allowing an application of the accused contending that the charges did not survive. The only section which authorised him to acquit, the accused under chapter XXI was Section 258. He could not pass an order under that section without following the mandatory procedure u/s 251A to be followed by the Magistrate, after framing the charge, when the accused pleaded not guilty, of

proceeding to record all such evidence as may be produced in support of the prosecution. I have taken a similar view in *The State v. Ganpat Bhilaji Marathe* (1968) Criminal Appeal No. 288 of 1968, decided by Vaidya J., on June 27, 1968 (Unrep.). It cannot be disputed in the present case that the objections raised by the Prosecutor were completely brushed aside by the learned Magistrate and thereby the prosecution was denied the opportunity to lead further evidence in the matter.

8. Mr. Bhonsale further relies on the decision of this Court in *State v. Kamalakar P. Juvekar*, which lays down that in a case where an accused was charged both u/s 279 and u/s 337 of the Indian Penal Code, although the two sections overlap to some extent, the compounding of the offence under B. 337, Indian Penal Code, did not have the effect of preventing the prosecution of the accused u/s 279. This Court held, with respect, rightly, that the offences under Sections 337 and 279 are distinct offences. Section 279 is essentially an offence against public safety. By Section 337, Indian Penal Code, causing hurt to a person by an act endangering life or personal safety of others is penalised. Mr. Bhonsale submits that in the present cases also whereas the offences under Sections 323, 504 and 506 as well as Section 451 are all offences against individuals, the offences under Sections 147 and 148 are offences against public tranquillity under chapter VIII of the Indian Penal Code. He submits that in these circumstances, the learned Magistrate erred in law in holding that because the offences under Sections 323, 504, 506, 451 were compounded by the accused and the injured persons, the offence u/s 148, which is non-compoundable and which is a distinct offence against public tranquillity, did not survive, and he submits that the accused in both the cases could be prosecuted for the same.

9. His submission is supported by a decision of the Madras High Court in *In re Matti Venkanna*. In that case the point which was raised was that the conviction of the accused u/s 143 and Section 447 of the Indian Penal Code was illegal because the offence u/s 447 was compounded. The case was being prosecuted by the police against the accused for the alleged trespass in the land of one of the prosecution witnesses. The case was compounded between the accused and the prosecution witnesses and Wallace J. held that in spite of this composition, the charge u/s 143 did not fall to the ground and observed (p. 258) :

The common object charged against the accused as members of the unlawful assembly is the criminal trespass aforesaid. Petitioner contends that since the parties had a legal right to compound that trespass, such a composition has the effect of annulling the common object charged, and therefore the charge u/s 143, Indian Penal Code, falls to the ground.

I am not prepared to support this contention. The essence of the offence u/s 148, Indian Penal Code, is the combination of several persons, united in the purpose of committing a criminal offence, and that consensus of purpose is itself an offence, distinct from the criminal offence which these persons agree and intend to commit. The compounding of one (an) offence does not mean that the

offence has not been committed, but that it has been committed, though the victim is willing either to forgive it or to accept some form of solatium as sufficient compensation for what he has suffered. The law allows prosecuting witness 1 to so deal with the offence of criminal trespass but not with the offence of five or more persons combining to effect that criminal trespass.

With very great respect, I cannot agree with this view. It is true that the offence u/s 143 is separately punishable and as such a distinct offence, but whether it is distinct from the offences which are compounded will depend on the facts and circumstances of each case. If, as in the present case, the charge-sheets as well as the charges framed are founded on the offences which are compounded, it is difficult to understand how the offences can be treated as distinct. It is true that all the facts together may constitute offences under two different sections, for instance, Sections 323 and 148. But if the charge u/s 148 is based on the hurt caused to a particular person by the members of the unlawful assembly and if the person so injured can compound the offence u/s 323 u/s 245 of the Criminal Procedure Code and if such composition has the effect of an acquittal, it seems to me that it will be against reason to assume that inspite of the acquittal in respect of the same set of facts and for causing the same hurt, the members of the unlawful assembly who have all compounded the matter will be liable to be prosecuted for being members of the unlawful assembly. It cannot be disputed in the present case that the charge-sheets in both the cases as well as the charges assume that the unlawful assembly alleged had the object of committing an offence within the meaning of the third clause of Section 141 inasmuch as compoundable offences under Sections 323, 504, 506 and 541 were committed by the members of the said assembly. With respect, Wallace J. is right when he says that the compounding of an offence does not mean that the offence has not been committed. But he has not taken into account the effect of composition as laid down u/s 345, Clause (6) which says that the composition of an offence shall have the effect of an acquittal of the accused. I must say that the report in *In re Matti Venkanna* of the said judgment does not disclose all the facts and circumstances in which the charges under Sections 143 and 447 were made in that case. It is difficult to understand from the report as to how inspite of the composition of the offence u/s 447, there was a conviction under Sections 143 and 447 of the Indian Penal Code, which conviction was upheld by Wallace J. It may be that the circumstances in that case showed that the two offences were distinct. No point arose in that case as to whether the alleged offence u/s 447 was distinct from the offence u/s 143, although Wallace J. has pointed out that on a construction of Section 143 itself an offence u/s 143 was distinct from the criminal offence which the persons agreed and intended to commit. With very great respect, if, as in the present cases, the compoundable offences committed by the members of the unlawful assembly are the foundation of the charge u/s 148, it is difficult to understand how the two are so distinct that if the compoundable offences are compounded, the offence u/s 148 will survive. It is true that the offence u/s 148 is an offence against public tranquillity. It is an

offence, one of whose ingredients is that the persons committing the offence must form an unlawful assembly as defined u/s 141. That definition has five categories of persons who may become members of unlawful assembly. But whether in the facts and circumstances of a particular case when the only provision of Section 141 applicable to the unlawful assembly is the third clause which says that if the common object of the persons composing the assembly is to commit an offence, and that offence itself is compoundable and it is compounded by the persons who can compound it, u/s 345 of the Criminal Procedure Code, it seems to me that it is not possible to hold that there can be a prosecution for an offence u/s 148. Section 146 lays down that whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. So, for purposes of the definition of rioting also, it is necessary that the prosecution must establish that force or violence was used in prosecution of the common object of the unlawful assembly which, in the present cases, was only to commit the offence under Sections 323, 504, 506 and 541, according to the charge-sheets, I, therefore, respectfully disagree with the view taken by the Madras High Court in *In re Matti Venkanna* and hold that after the offences under Sections 323, 504, 506 and 541 in the two cases were compounded by the accused in the two cases and the injured persons, the accused could not be prosecuted further in the facts and circumstances of the present cases u/s 148 of the Indian Penal Code.

10. A similar view has been taken in *Ramphal v. State of Bihar*, which has been relied upon by the Judicial Magistrate for holding that the offence u/s 148 of the Indian Penal Code must fail. In that case also the prosecution case was that one Ramphal Gope and one other man came to the house of one Ramdeo Gope and demanded the price of onion seedlings which was due. Ramdeo told that he would pay the price when he would get the price of milk which he had supplied to others. This led to hot words. On the following day at about 8 or 8-30 a.m., Ramphal Gope and others, who were the accused in that case, came to the house of Ramdeo and demanded the price at once. Ramdeo refused. The accused assaulted Ramdeo. The accused were convicted by the trial Court u/s 148 of the Indian Penal Code and sentenced to one year's rigorous imprisonment. They were also further convicted u/s 324 of the Indian Penal Code, but no separate sentence was passed, in spite of the fact that before the trial Court there was a compromise petition filed and the trial Court accepted the compromise so far as the offence u/s 323 of the Indian Penal Code was concerned. The accused appealed to the Sessions Judge and in appeal the convictions were altered from Section 148 to Section 147 and from Section 324 to Section 323 and the sentences were reduced. The accused applied in revision to the High Court and it was contended before the High Court that in view of the fact that the compounding was allowed in respect of the offence u/s 323 and the appellate Court had convicted the accused u/s 323 and Section 147, the convictions ordered by the Sessions Judge were illegal. In upholding the contentions Syed

Naqui Imam J. found (p. 112) :

...Now that the appellate Court has found these petitioners guilty under Sections 323 and 323/31, Indian Penal Code, in my opinion, the compromise petition can be put into effect even at this stage. There now remains the charge u/s 147 Indian Penal Code which is not compoundable. But it appears that the common object of the unlawful assembly was to assault. If the charges under Sections 323 and 323/34 Indian Penal Code fail on account of the compromise, it is obvious that the charge u/s 147 Indian Penal Code must also fail because the common object was to assault. For this reason I am satisfied that the petitioners must be acquitted of all the charges framed against them.

It is true that the judgment and the report do not show that any authorities were cited before him. But, with respect, the learned Judge appears to have taken the view that if the common object of the unlawful assembly was to commit an offence which is compoundable and is compounded, it is "obvious" that the charge u/s 147 must fail.

11. The very fact that u/s 345 of the Criminal Procedure Code certain offences are allowed to be compounded shows the intention of the Legislature that although these are offences punishable under the Indian Penal Code, the interest of society and public order do not require that the State should prosecute the persons concerned after the composition. That is why the effect of composition is said to be that of an acquittal. It cannot be argued that a person is acquitted of the offence and still he has committed an offence. It cannot also be argued that although each of the accused has not committed the offence, all of them together have committed the offence. I am, therefore, of the view that in the present cases, the Judicial Magistrate could not have framed a charge u/s 148 in view of the orders passed by his predecessor in the two cases on March 17, 1967. The proper procedure for his predecessor as well as for himself after the order of acquittal was passed was not to frame a charge u/s 148, Indian Penal Code, but to discharge the accused u/s 251A(2), Criminal Procedure Code, because when the offences were compounded by the accused in the two cases and the prosecution witnesses who were injured in the course of the alleged rioting, before any charges were framed and once the order of acquittal was passed on the basis of the composition, the Magistrate ought to have considered the charge u/s 148 to be groundless within the meaning of Clause (2) of Section 251A of the Criminal Procedure Code.

12. Mr. Bhonsale contended that even for arriving at this conclusion, the learned Magistrate ought to have allowed the prosecution to lead all evidence and since the Prosecutor was prevented from leading all the evidence, the Magistrate was in error in holding that the charge u/s 148 did not survive. But Clause (2) itself envisages a stage when an opportunity is given to the prosecution before the evidence is led and the Magistrate is satisfied that the charge against the accused is groundless. The charge referred to in the case is the charge which is levelled in the report of the police upon which the magistrate is required to follow

the procedure u/s 251. I am, therefore, of the view that the Judicial Magistrate ought to have discharged the accused in the two cases with respect to the charge u/s 148, Indian Penal Code, in exercise of his powers u/s 251A(2). Thus I have come to the conclusion in these two cases that the Magistrate had no jurisdiction to pass an order of acquittal and the proper order to pass after the compounding of the offences under Sections 323, 504, 506 and 541 in the facts and circumstances of the case was to discharge the accused u/s 251A(2).

13. Apart from this, even assuming that the view taken by me regarding the effect of the composition of the compoundable offences in this case is not correct, the only order which can be passed is that the order of acquittal will have to be set aside and the matters will have to be sent back for retrial. It is well settled that a retrial is to be ordered by this Court only in exceptional circumstances and in the ends of justice. There are no exceptional circumstances in this case. There was a meeting of the bank which was attended by some of the citizens of Manmad who claimed to be merchants belonging to respectable families. They behaved in a way which does no credit to their respectability in causing hurt to some of them mutually. Some of them went to the police. The police filed two charge-sheets against the fourteen accused who are involved in the two cases. By the time the matter came up for hearing before the Court and even before any charge was framed, wisdom dawned on these persons and they settled their dispute and compounded the matters which could be compounded. Section 345 itself allows composition of offences under Sections 323, 504, 506, without any permission from the Court. This means that it is the policy of the law that such offences should be allowed to be compounded if the parties so desire. It also means that the State cannot prosecute such persons as the effect of the composition is that of an acquittal. It appears that the predecessor of the Judicial Magistrate who passed the order of acquittal thought that the proper procedure would be to ask the parties to move the District Magistrate to withdraw the cases. The Roznamas in both the cases show that the cases were adjourned from time to time for more than four months after the parties moved the District Magistrate for withdrawal of the cases. It is rather surprising that there is nothing in the Roznamas of these cases to show as to whether the District Magistrate refused to withdraw the cases or considered their request. The only thing that is patent is that the State had decided to file these two appeals against the order of the Judicial Magistrate. It seems to me that if the District Magistrate had applied his mind, he would have himself directed the Prosecutor to withdraw the cases because it is difficult to imagine how the State would be interested in prosecuting the accused in the facts and circumstances of the case. Having regard to all these facts and circumstances, I am of the view that it will not be just or fair to order a retrial in these two cases, particularly when all the accused and the injured persons have treated the entire matter as closed.

14. In the result, both the appeals are dismissed.