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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 11th OF JULY, 2023

CRIMINAL APPEAL No. 5550 of 2023

BETWEEN:-

1. SOHAN JANGU S/O MUNSHI KHA, AGED ABOUT 50 YEARS,
OCCUPATION: AGRICULTURIST R/O MULTANPURA
MANDSAUR (MADHYA PRADESH)
2. TALIB S/O CHAND KHA, AGED ABOUT 24 YEARS,
OCCUPATION: AGRICULTURIST MULTANPUR DISTRICT
MANDSAUR (MADHYA PRADESH)
3. KAMRU S/O MUNSHI, AGED ABOUT 55 YEARS,
OCCUPATION: AGRICULTURIST MULTANPUR DISTRICT
MANDSAUR (MADHYA PRADESH)
4. ASLAM S/O RAFIK JANGU, AGED ABOUT 49 YEARS,
OCCUPATION: AGRICULTURIST MULTANPUR DISTRICT
MANDSAUR (MADHYA PRADESH)
5. CHAND S/O MUNSHI JANGU, AGED ABOUT 49 YEARS,
OCCUPATION: AGRICULTURIST MULTANPUR DISTRICT
MANDSAUR (MADHYA PRADESH)
6. SHAHJAD S/O MUNSHI JANGU, AGED ABOUT 60 YEARS,
OCCUPATION: AGRICULTURIST MULTANPUR DISTRICT
MANDSAUR (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI VIKAS JAIN, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THROUGH POLICE STATION Y.D.NAGAR DISTT. MANDSAUR
(MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI SURENDRA GUPTA, GOVERNMENT ADVOCATE)
(BY SHRI SANJAY KUMAR SHARMA, LEARNED COUNSEL FOR THE
COMPLAINANT)***

This appeal coming on for orders this day, heard with the consent of parties and the court passed the following:

JUDGMENT

The present appeal is filed against the judgment conviction and sentence dated 08.04.2023 passed by the II Additional Sessions Judge, Mandsaur in Sessions Trial No.1300191/2016, whereby, the appellant has been convicted under sections 148, 323/149 (three counts), 325/149 and 307/149, 307 of IPC and sentenced to undergo 1 year RI (each), 6 months R.I. (each), 2 years of R.I. (each) and 10 years of R.I. (each) with fine of Rs.Nil, Rs. Nil, Rs.1,000/- and Rs.5,000/- respectively with default stipulations.

2. As per the prosecution case, the appellants had caused fatal injury to Yusuf, Rashid, Akil and Aameen Bee received simple injuries. No danger weapons have been used. For causing injury to Yusuf, Rashid, Akil and Aameen Bee, they have been convicted under section 148, 323/149 (three counts), 325/149 and 307/149, 307 IPC. The appellants and the complainants filed an application for compounding, as I.A.No. 9214/2023.

3. The said application was sent for verification before the Principal Registrar of the Court. In compliance to the said order, the appellants were produced before the Principal Registrar in Escort and complainants also appeared before the Principal Registrar. The compromise was verified and a report has been submitted that accused/appellants and the complainants have entered into compromise with mutual consent. There is no dispute remaining between the accused/appellants and the complainants.

4. Counsel for the appellant submits that so far as sentence is concerned, the appellant has already undergone jail sentence of more than 3 months and the incident had taken place in the year 2013. The offence under sections 148, 323/149 (three counts), 325/149 and 307/149, 307 of IPC has already been compromised with the

victim/complainants and therefore, while maintaining the conviction, the jail sentence may be reduced to the period already undergone and the fine amount may be reasonably enhanced which may be directed to be paid to the complainants.

5. Learned counsel for the respondent/state submits that the offence under sections 148, 307 & 149 of IPC are non-compoundable, therefore, the offence cannot be compounded under section 320 of the Cr.P.C. However, rest of the offences are compoundable.

6. The Apex Court in the case of **Gian Singh Vs. State of Punjab and Anr. reported in (2012) 10 SCC 303** after considering the the provisions of section 320 and 482 of the Cr.P.C held that the compounding was permitted in a non- compoundable offence. Relevant part of the order of the order reads as under :-

"Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S.Joshi, Nikhil Merchant, Manoj Sharma and Shiji this Court has compounded the

non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment."

7. In a subsequent order, in the case of **Narinder Singh and Ors Vs. State of Punjab And Anr** passed in Criminal Appeal No.686/2014 dated 27.03.2014, after relying on the judgment passed in the case of **Gian Singh (supra)**, the Apex Court permitted the compounding in a non-compoundable case and quashed the criminal proceedings.

8. After hearing learned counsel for the parties and in view of the judgments passed by the Apex Court in the case of **Gian Singh (supra)** and **Narinder Singh (supra)**, the application for compounding on the basis of compromise filed by both the parties, is allowed to the extent of compoundable offences under Section 323/149 and 325/149 of IPC. So far as the offence under Section 307 r/w 149 and 148 of IPC are concerned, the compromise should not be allowed in this regard. On this point, the view of Hon'ble Apex Court in the **Unnikrishnan alias Unnikuttan versus State of Kerala reported in AIR 2017 Supreme Court 1745** is worth referring in the context of this case as under:-

"10. In series of decisions i.e. Bharath Singh vs. State of M.P. and Ors., 1990 (Supp) SCC 62, Ramlal vs. State of J & K, (1999) 2 SCC 213, Puttaswamy vs. State of Karnataka and Anr, (2009) 1 SCC 711, this Court allowed the parties to compound the offence even though the offence is a non-compoundable depending on the facts and circumstances of each case. In some cases this Court while imposing the fine amount reduced the sentence to the period already undergone."

11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrive at between the parties, reduce the sentence imposed while maintaining the conviction."

9. Even this Court in Cr.A. No.268/2016 (**Kanha @ Mahesh v/s The State of Madhya Pradesh**) decided on 26.08.2017 as well as in Cr.A. No.561/2010 (**Radhakrishnan & 3 Others v/s The State of Madhya Pradesh**) decided on 18.04.2017 and in CRA No.604/2000 (**Aaram singh vs. The State of Madhya Pradesh**) decided on 08.08.2019, has taken a similar view.

10. As the offence under Section 307 of the Indian Penal Code is not compoundable under Section 320 of the Code of Criminal Procedure, 1973, it is not possible to pass the order of acquittal on the basis of compromise but, it is by now well settled that such a compromise can be taken into account for reduction of sentence. The appellant and the complainant are living in the same society, they are residing happily since last so many years, they want to live with peace, and therefore, to meet the ends of justice, the sentence of imprisonment awarded against the appellant may be reduced to the period already undergone

11. In view of the aforesaid principles laid down by Hon'ble Apex Court and by this Court taking into consideration that the incident had taken place in the year 2013 and further the appellant has already undergone jail sentence of about three months and no fruitful purpose would be served in keeping the appellants in jail even after the compromise between the parties, this Court is of the view that while maintaining the conviction under sections 148, 307/307/149 of IPC, the jail sentence is reduced to the period already undergone and fine amount of Rs.5000/- is also enhanced to Rs.10000/- under Section 307 of IPC, each. The fine amount, if already deposited, shall be adjusted.

12. The appellants are in custody. They shall be released forthwith, if not required in any other case in jail, upon depositing the aforesaid enhanced fine amount within a period of one week from today.

13. In case, if the appellants fail to deposit the aforesaid enhanced fine amount within stipulated period, they shall suffer 3-3 months S.I. each.

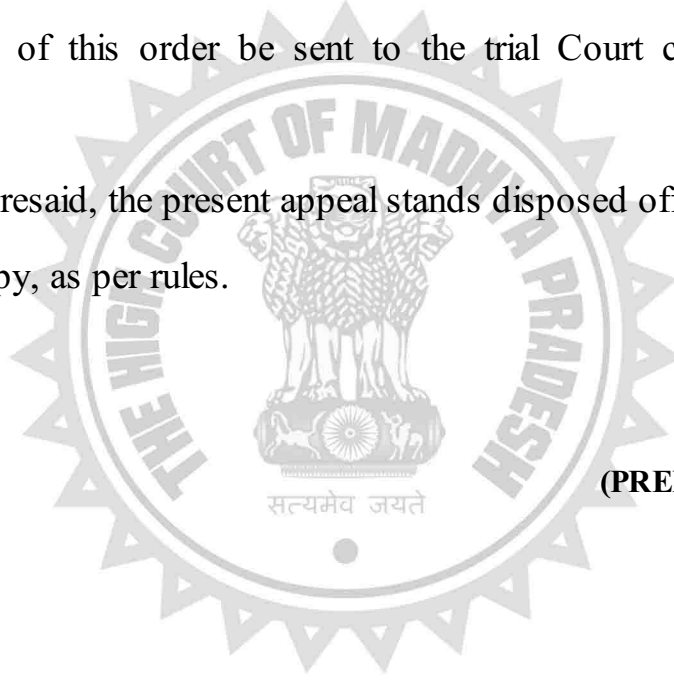
14. Out of the fine amount so recovered/deposited, Rs.10000/- be paid to injured-Yusuf.

15. The judgment of learned trial Court regarding seized property stands confirmed.

16. A copy of this order be sent to the trial Court concerned for necessary compliance.

With the aforesaid, the present appeal stands disposed off.

Certified copy, as per rules.



(PREM NARAYAN SINGH)
JUDGE