



Crl.RC.(MD).No.754 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.08.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Athithan

... Petitioner

Vs.

1.The State Rep through
The Inspector of Police,
Sayarpuram Police Station,
Thoothukudi District

2.Lingadurai

... Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to allow the revision petition by setting aside the order and call for the records in Crl.M.P.No.2382 of 2023 in Crl.A.No.113 of 2022, on the file of the learned Principal Sessions Judge, Thoothukudi filed against S.C.No.120 of 2016 on the file of the learned Assistant Sessions Judge, Thoothukudi.

For Petitioner : Mr.S.R.Shanmuga Velayutham
Senior Counsel for
Mr.A.Sivaji

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl.Side) for R1



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ORDER

This Criminal Revision Case has been filed against the order passed in Crl.M.P.No.2382 of 2023 in Crl.A.No.113 of 2022, by the Principal Sessions Judge, Thoothukudi filed against S.C.No.120 of 2016 on the file of Assistant Sessions Judge, Thoothukudi.

2. The case of the prosecution is that on 24.03.2013, at about 05.30 hours, when P.W.1 Lingadurai and his daughter came out of the house for going to temple, the petitioner and other accused came in Hero Honda Two Wheeler bearing Registration No.TN 60 B 3195 and asked the P.W.1 to talk to him. When the same was refused by P.W.1, the petitioner and other accused is said to have abused him and attacked him with Aruval on his head and he sustained grievous injuries on his head. Again the petitioner is said to have attacked P.W. 1. At that time, when P.W.2 restrained the first accused, she also sustained injuries on her left hand. P.W.3 to 5 questioned the act of petitioner and other accused. When P.W.1 caught hold the petitioner and the petitioner bit his wrist and caused simple injury. Then, the petitioner and other accused are said to have criminally intimidated him. Thereafter, P.W.1 gave a complaint before the



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first respondent. Based on which, the first respondent registered a case in Crime No.30 of 2013 for the offence under Sections 294(b), 324, 307 and 506(ii) of IPC. After completion of investigation, the final report was filed and the same was taken on file in S.C.No.120 of 2016 by the Assistant Sessions Judge, Thoothukudi.

3. Aggrieved over the conviction and sentence, the petitioner filed an appeal in C.A.No.113 of 2022, on the file of the learned Principal District and Sessions Judge, Thoothukudi. During the pendency of the same, the petitioner filed compounding petition under Section 320 of Cr.P.C., and the same was dismissed vide impugned order dated 17.04.2023 in Crl.M.P.No.2382 of 2023. Challenging the same, the petitioner filed this criminal revision case before this Court.

4. The learned Senior Counsel, appearing for the petitioner submitted that the learned appellate judge is not correct in dismissing the compounding petition by passing the docket order stating that Section 320 of Cr.P.C., is not applicable and the said offences could not be compounded at the appellate



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stage. The appellate Court has power to entertain the compounding petition at the stage of appeal, as per the judgment reported in **2021 1 SC 726**. The learned Senior Counsel made detailed submission relying on the factual aspect also. According to the learned Senior counsel, the dispute is between the relatives only and hence, the offence can be compounded. The defacto complainant also filed an affidavit before the learned appellate Judge.

5. The learned Government Advocate (Criminal side), on instructions, submitted that as per Section 320 of Cr.P.C., the said offences are not compoundable and the compounding petition was correctly dismissed by the learned trial Judge.

6. This Court has considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on records.

7. Before going into the merits of this case, it is relevant to note the docket order passed by the learned Principal Sessions Judge, Thoothukudi in Cr.M.P.No.2382 of 2023 in Crl.A.No.113 of 2022, which is extracted hereunder:



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This petition has been filed by the petitioner/Appellant/A1 under Section 320 Cr.P.C., to record the compromise made between the parties.

Heard both sides. This appeal has been preferred against the judgment of conviction and sentence passed against the petitioner/appellant/A1 for the offence under Section 326 of IPC is non-compoundable offence and the same could not be compounded before this Court at the appellate stage. Hence, this petition is dismissed.

In this case, the issue of maintainability of the compounding petition has been raised in the appellate stage. It is relevant to extract the dispute between the parties:

4.It is submitted that Athithan and Lingadurai/2nd respondent are relatives, so they settled the issue and reached the compromise. As per compromise the Athithan and Lingadurai/2nd respondent pledged not to indulge in any litigation against each other and withdraw the complaint which are pending before the Court.



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5.The both parties don't have intended to proceed with any other criminal case. Both parties hereby agree that they will not resort to any further litigation for the issue. In the forgoing circumstances, it is prayed that this Hon'ble Court may by pleased to records and render justice.

8. P.W.1 is doing travel business. The accused No.1 is running a workshop. P.W.1 left his vehicle for doing tinkering. The accused were said to have removed the aluminium materials with an intention to sell the same. The same was questioned by P.W.1. Hence some dispute arose between them. Thereafter, the occurrence had pursued. During the course of wordy quarrel, P.W.1 abused the accused as a thief and hence the accused got provoked and there was a scuffle. In the result, the accused were said to have assaulted P.W.1 with knife and thereby he sustained injury. Hence, the case was registered and ended in conviction.

9. From the above narration, it is clear that the incident is an outburst of angle and not premeditated. Both parties had no intention to promote the



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dispute. It is seen from the records, both parties were in good terms before the occurrence. Only due to the occurrence, some misunderstanding had taken place with regard to the repair of the car and the said occurrence happened. Now, the parties have amicably settled the matter.

10. This Court had considered the above situation and found that the application under Section 320 of Cr.P.C., is maintainable. As per the judgment of the Hon'ble Supreme Court in the case of ***Murali Vs. Inspector of Police*** reported on ***2021 1 SCC 726***, the compounding petition is maintainable at the stage of appeal.

11. In view of the above, as the dispute is in between the close relatives and in order to maintain peace between the parties, this Court is inclined to allow this petition. Accordingly, the learned Principal District and Sessions Judge is directed to accept the compounding petition as per the judgment of the Hon'ble Supreme Court in the case of ***Murali Vs. Inspector of Police*** reported in ***2021 (1) SCC 726*** and pass suitable order in Crl.A.No.113 of 2022.



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12. With the above directions, this Criminal Revision Case stands allowed.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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To

1.The learned Principal District and Sessions Judge,
Thoothukudi.

2.The learned Assistant Sessions Judge,
Thoothukudi.

3.The Inspector of Police,
Sayarpuram Police Station,
Thoothukudi District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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