

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.96 of 2014

Sri Naresh Chandra Paul,
son of late Durga Charan Paul,
Resident of Uttar Kalaban,
P.S. R. K. Pur,
District – Gomati, Tripura

..... **Petitioner**

– Vs –

The State of Tripura

.....**Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. B. Deb, Advocate

For the respondent : Mr. A. Ghosh, Public Prosecutor

Date of hearing and delivery : **11.06.2015**
of judgment & order

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. B. Deb, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent.

02. In terms of the order dated 28.05.2015, Smti. Kajal Lata Paul wife of Sri Swapan Paul, resident of Uttar Kalaban, P.S. RK. Pur, District, Gomati, Tripura has appeared before this court and stated that the petitioner has expressed his remorse, sought her mercy and thereafter she has decided not to insist for punishment of the petitioner, namely Naresh Ch. Paul, who has been convicted by the

Judicial Magistrate, 1st Class, Court No.1, Udaipur, Gomati Judicial District in case No. PRC 181 of 2013 under Section 354/447 of the IPC.

03. Pursuant to that conviction, the petitioner was sentenced by the trial court to suffer SI for one year and a fine of Rs.5,000/- with default imprisonment under Section 354 of the IPC and to pay a fine of Rs.500/- with default imprisonment under Section 447 of the IPC.

04. Being aggrieved, the petitioner filed an appeal in the court of the Sessions Judge, Gomati District, Udaipur being Criminal Appeal No.48(4) of 2013 and the said appeal was dismissed by the judgment and order dated 18.11.2014 on affirming the judgment of conviction and order of sentence passed by the trial court. This revision petition is against the said judgment and order dated 18.11.2014.

05. During pendency of this petition, the victim and the convict have filed a joint application under Section 482 of the Cr.P.C., where it has been stated that the victim realising that the family of the convict would be ruined has decided to settle the matter, as it is stated by her, appearing in person, that the petitioner has also expressed his remorse and sought mercy. The offence punishable under Section 354 of the IPC, in particular, is not compoundable under Section 320 of the Cr.P.C.

06. To overcome this bottleneck, Mr. Deb, learned counsel for the petitioner has relied on a decision of the apex court in ***Shiji alias***

Pappu and others v. Radhika and another reported in **(2011)10 SCC 705** which has been followed in ***Narinder Singh v. State of Punjab*** reported in **(2014)6 SCC 466**. It has been held in ***Shiji alias Pappu and others v. Radhika and another*** as under:

"5. We have heard the learned counsel for the parties and perused the impugned order. Section 320 CrPC enlists the offences that are compoundable with the permission of the Court before which the prosecution is pending and those that can be compounded even without such permission. An offence punishable under Section 354 IPC is in terms of Section 320(2) of the Code compoundable at the instance of the woman against whom the offence is committed. To that extent, therefore, there is no difficulty in either quashing the proceedings or compounding the offence under Section 354, of which the appellants are accused, having regard to the fact that the alleged victim of the offence has settled the matter with the alleged assailants. An offence punishable under Section 394 IPC is not, however, compoundable with or without the permission of the Court concerned. The question is whether the High Court could and ought to have exercised its power under Section 482 CrPC for quashing the prosecution under the said provision in the light of the compromise that the parties have arrived at."

07. Mr. Deb, learned counsel for the petitioner has thus submitted that since the matter has been settled between the victim and the offender for their peaceful living and for saving the family of the offender from ruination, this Court may accept this settlement by compounding the offence and releasing the petitioner without any sentence.

08. Mr. Ghosh, learned PP has not raised any opposition against such prayer.

09. Having regard to the submission made by the learned counsel for the parties and also on scrutiny of the records, this court must focus on the scope and ambit of the powers provided under

Section 482 of the CrPC. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly with extreme caution and for purpose of substantive justice, not for its failure. This is exactly the law that has been enunciated in **Narinder Singh v. State of Punjab**. In **Narinder Singh v. State of Punjab** it has been further observed that:

"29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves."

10. It has been further observed in **Narinder Singh v. State of Punjab** as under:

"29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

11. Since in this case the parties have settled their score and have come to this court by filing an affirmed petition that the victim has no grievance at present and out of mercy she has prayed before this court that no sentence be executed against the petitioner.

12. Having regard to this situation and the development that has taken place outside the court, even though this court is not inclined to interfere with the conviction but considers that the petitioner shall be allowed to be released by executing a bond of probation of good conduct. Accordingly, the order of sentence is interfered with subject to the observation made hereinafter. The petitioner shall be released on furnishing a bond of probation for a period of one year undertaking good conduct during that period in the trial court, supported by one surety. It is further made clear that if the probation officer makes any adverse report against the petitioner during the period of probation then the trial court may enforce the sentence that has been interfered with without making any reference to this court. The bond of probation shall be furnished within a period of three weeks from today to the satisfaction of the Judicial Magistrate, 1st Class, Udaipur, Gomati Judicial District. It is made clear that if within the stipulated time such bond is not submitted by the petitioner, he shall either surrender for suffering the sentence as awarded by the impugned judgment or the trial court

shall take all necessary measures to ensure that he suffer the said sentence.

With this observation and direction, this petition stands disposed of.

JUDGE

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