

Bail Slip

That the petitioner/Accused 1 Alagesan, S/o.Chinnathambi, 2.Kesavan, S/o.P.M.Sundaram @ Eangooran, were directed to be released on bail as per order dated 25.7.2003 made in Crl.MP.6812/2003 in Crl.A.1126/2003 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.1126 of 2003

and

Crl.M.P.No.15597 of 2017

1.Alagesan

2.Kesavan

... Appellant

Vs

State

by Inspector of Police,

Komarapalayam Police Station,

Namakkal District.

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence imposed in judgment dated 04.07.2003 made in S.C.No.24 of 2003 on the file of the Additional District and Sessions Court/Fast Track Court No.III, Namakkal, by allowing the criminal appeal.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.J.Karuppiah

Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal has been filed against the order of conviction. The accused 1 and 2, in Sessions Case No.24 of 2003, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Namakkal are the appellants herein. Totally, there are five accused in this case. The accused 1 and 2 stood charged for the offences under Section 307 IPC and accused 3 to 5 stood charged for the offence under Section 307 r/w 120(B) IPC. The Trial Court, by judgement dated 04.07.2003, found the accused 1 and 2 guilty and convicted them under Section 326 IPC and sentenced them to undergo six months rigorous imprisonment and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for six months and acquitted the accused 3 to 5 from the charges levelled against them. Challenging the above said conviction and sentence, the appellants/accused 1 and 2 are before this Court, with this appeal.

2. Today, when the matter was taken up for hearing, both the defacto complainant, namely, A.K.Nagarajan and the appellants are present before this Court and filed a petition under Section 320 r/w 482 Cr.P.C. to compound the offence on the ground that the parties have settled the dispute between themselves, and now they are maintaining good relationship and the defacto complainant is not willing to proceed with the criminal case.

3. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the defacto complainant and perused the materials available on record.

4. This Court also enquired the defacto complainant, and he had stated that they have settled the dispute between themselves, and now they are maintaining good relationship and the defacto complainant is not willing to proceed with the criminal case.

5. Even though, the offence under Section 326 IPC is non compoundable offence, in view of the fact that the accused and defacto complainant are living in the same village and they are close friends and they are also members of the same political party, now they are living in harmony and the defacto complainant is also not interested in prosecuting the case.

6. The Hon'ble Supreme Court in GIAN SINGH Vs. STATE OF PUNJAB AND ANOTHER reported in 2012(10)SCC 303, it has held as follows:

61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engraved in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious

offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

7. Keeping the above dictum laid down by the Hon'ble Supreme Court in mind, I have considering the present application.

8. Since the matter has been settled between the parties, and they are now living in harmony. In the said circumstances, I am inclined to compound the offence and set aside the conviction and sentence imposed by the Courts below.

9. In the result, this Criminal Appeal is allowed. The conviction recorded and the sentence awarded on the appellants by the learned Additional District and Sessions Judge, (Fast Track Court No.III), Namakkal is set aside and the offence is compounded. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Namakkal.
- 2.The Inspector of Police,
Komarapalayam Police Station,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Principal Sessions Judge, Namakkal
- 5.The Chief Judicial Magistrate, Namakkal
- 6.The Judicial Magistrate I, Sankagiri

+1cc to Mr.N.Manokaran, Advocate Sr.No.88189

SG(CO)
sm:21.6.2018

Cr1.A.No.1126 of 2003