

Bail Slip.

The Appellant/Petitioner/Accused namely T.N. Jayapal, S/o Narayanasamy aged about 46 was directed to be released on bail as per the order of this court dated 12.10.2017 in CrI.M.P. 12750/2017 in CrI.R.C. 1312/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.1312 of 2017
and
CrI.M.P.No.12753 of 2017

T.N.Jayapal .. Petitioner/Appellant/Accused

Vs.

State by the Inspector of Police,
Tiruchengode Town Police Station,
Crime No.529 of 2014,
Namakkal District. .. Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to call for the records relating to the conviction imposed in the judgment dated 28.09.2017 made in C.A.No.18 of 2016 on the file of the learned Sessions Judge, Fast Track Court, Mahila Court, Namakkal, confirming the conviction imposed in the judgment dated 08.06.2016 made in S.C.No.50 of 2015 on the file of the learned Assistant Sessions Judge, Thiruchengode and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Suriyaprakash
Government Advocate (CrI.Side)

O R D E R

This criminal revision petition is preferred by the petitioner/appellant/accused against the confirmation of conviction and sentence passed by the learned Sessions Judge, Fast Track Court, Mahila Court, Namakkal in C.A.No.18 of 2016 dated 28.09.2017, wherein the learned lower appellate Court

confirmed the conviction and sentence imposed by the trial Court in its judgment dated 08.06.2016 passed in S.C.No.50 of 2015 on the file of the learned Assistant Sessions Judge, Tiruchengode for the offences under section 294(b) of IPC and sentenced to undergo 3 months rigorous imprisonment and under section 307 of IPC sentenced to undergo 7 years rigorous imprisonment and imposed fine of Rs.10,000/- in default to undergo further six months simple imprisonment.

2.Brief case of the petitioner/accused is that:

The prosecution case is that PW 1 Karthi working in the Vinayaka Finance at Tiruchengode went to the house of PW4 Kuppusamy at about 7.15 A.M. on 07.12.2014 demanding loan installment. PW4 Kuppusamy stated that the vehicle was with the petitioner/accused Jeyapaul and if he was taken to shop of petitioner/accused, PW4 agreed to hand over the vehicle to PW1. Then both went to the shop and PW1 tried to take the vehicle by using spare key. Immediately the petitioner/accused assaulted PW1 by using filthy language in which the PW1 and the vehicle fell down. At that time, the petitioner/accused pick up a knife and attacked PW1 in his left shoulder. The petitioner/accused again tried to assaulted PW1 which was resisted by PW1 in which the PW1 sustained grievous injury on his left hand. Then PW1 took treatment at Government Hospital, Tiurchengode. On his complaint, the respondent police registered the case in Crime No.529 of 2014 under sections 294(b) and 307 of IPC against the petitioner/accused. PW14 the Inspector of Police conducted preliminary investigation arrested the petitioner/accused and recorded confession statement and also seized the materials under cover of seizure mahazar and examined witnesses and recorded their statements. The knife used for assaulting PW1 is M.O.1, the complaint preferred is Exhibit-P1. The PWs-2, 3 and 4 were the eye witnesses to the occurrence. PW6 Prakash signed in the observation mahazar prepared by the police. PWs-9 and 10 signed as attestors in the recovery mahazar, Exhibit-P3 for the seizure of knife M.O.1. PW11 Dr.Ramakrishnan treated PW1 on 07.09.2014 at about 7.30 A.M. On examination, PW1 having cut injury to the extent of 10x10 cm on his left shoulder. The bone of left shoulder can be seen in a naked eye. Another cut injury at about 1x1 cm in his left wrist. Another cut injury at about 1x0.5 cm on the back side of neck. The copy of accident register recorded by him is Exhibit-P6. PW-11 referred him to Government Hospital, Erode for treatment. PW12 Dr.John Gurubatham treated PW1 and issued wound certificate Exhibit-P7 and opined that the injuries are grievous in nature. PW15 Inspector of Police conducted further investigation and filed the final report against the petitioner/accused on 10.03.2015.

3. On committal, the learned trial Court framed charges against the petitioner/accused under sections 294(b) and 307 of IPC. The petitioner/accused denied the charges.

4. During the trial, the prosecution examined PWs-1 to 15, marked Exhibits-P1 to P11 and M.O.1 on the side of the petitioner/accused.

5. After completion of the trial, on appreciating the material available on record the trial Court convicted the petitioner/accused for the offences under section 294(b), 307 of IPC.

6. Aggrieved over the same, the petitioner/accused preferred criminal appeal before the learned Sessions Judge Fast Track Mahila Court, Namakkal in C.A.No.18 of 2016, where in the learned lower appellate Court confirmed the conviction and sentence passed by the learned trial Judge dated 8.6.2017. Hence, the criminal revision.

7. The learned counsel for the petitioner/accused submits that the dispute between the petitioner and PW1 has been settled by the well wishers and family members hence both of them jointly filed a memo before the 1st appellate Court seeking permission to compound the offence, and it was not entertained on the ground that section 307 of IPC is not a compoundable offence. This Court is empowered to exercise its inherent power under section 482 of Cr.P.C. to permit the parties to compound the offence for twin objectives (i) to prevent abuse of the process of any Court, or (ii) to secure the ends of justice.

8. The learned counsel for the petitioner/accused submits that the evidence of PW9, PW11 and PW12 would falsify the version of the prosecution case. The Courts below have simply accepted the version projected by PW1 to PW4 as a gospel truth.

9. The learned counsel for the petitioner/accused submits that PWs 2 to 4 would not have been present at the time of the alleged occurrence as could be seen from the cross examination. PW1 to PW3 are co-employees and their evidence would lend support to the defense theory.

10. The learned counsel for the petitioner/accused submits that the injuries sustained PW 1 has not resulted in any

permanent disablement. The evidence of PW11 and PW12 and Ex.P7 would show that the sentence already undergone is sufficient enough, and no prejudice should be caused in the event of entertaining the petition to compound the offence.

11.The learned counsel for the petitioner/accused submits that the injury caused to the defacto complainant is not endangering to the human life and it will not cause death in the course of same transaction. Further X-ray report is not produced and marked before this Court to prove the fracture and the injury caused to the defacto complainant is grievous in nature. So the offence committed by the appellant/accused is punishable only under Section 324 of IPC and it is a compoundable.

12.The learned counsel for the petitioner/accused submits the citations for supported his submissions:

- 1) 2007 (4) CTC 769
- 2) 1976 (4) SCC 394

13.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the Court below and sought for dismissal of the criminal revision.

14.I have heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

15.In general parlance, "compounding" is known as "compromise" the expression is used to condone any felony in exchange for reparation received by the victim complainant from the felon.

16."Compounding" of an offence in terms of its power under section 320(6) of Cr.P.C by this Court as an Appellate or Revisional Court has, thus, no similarity or relevance with its inherent and plenary jurisdiction under section 482 of Cr.P.C. which cannot be limited or affected by any other provision contained in the code. Suffice to say that the inherent jurisdiction includes the High Court's power to whittle down and also quash ongoing criminal prosecution provided that a case to prevent abuse of the process of law or to advance the ends of justice" etc. is made out in unequivocal terms.

17.The scope of these two sets of powers enjoyed upon by the High Court may shrink or expand depending upon pre/post conviction eventualities, especially if in pre conviction case (s) the High Court, as a matter of fact, is satisfied that continuation of criminal proceedings would be an exercise in futility; their fate-accomplish is known; and further pendency thereof would be an undesirable burden on the trial Courts, who are already struggling hard to manage their unmanageable dockets.

18.In essence, I have been called upon to determine, can be briefly encapsulated as under:

"Whether the High Court has the power under section 397 r/w 401 of Cr.P.C. to quash the criminal proceedings or allow the compounding of the offences in the event of the parties entering into a compromise in the cases which have been specified as non-compoundable offences and in particular, in view of the provisions of section 320 of the Cr.P.C."

19.The learned Government Advocate (Criminal Side) who contended that in view of the bar contained in section 320 of Cr.P.C., this Court could not brandish its inherent powers to quash the proceedings. To drive home his submissions, he relied on State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335; Arun Shankar Shukla v. State of U.P. and others, 1999(6) SCC 146; and Bankat v. State of Maharashtra, 2005 (I) R.C.R. (Crl. 306).

20.Section 320 of the Cr.P.C provides a table of offences punishable under the Indian Penal Code which may be compounded. It also details the table of the offences under the Indian Penal Code which can be compounded with the permission of the Court. Sub section (9) of section 320 which is relevant, is reproduced below:

"320 compounding of offences (1) to (8) ...

(9) No offence shall be compounded except as provided by this section"

21.In this case, the PW1/Respondent No.2 placed on record his affidavit dated 26.02.2018. In his affidavit, it has been stated that he has decided and made up his mind for not pursuing the case as no useful purpose shall be served by punishing the petitioner. He further stated that the petitioner have

apologized to the respondent No.2. The parties compromised the matter without any fear, force or pressure. All the disputes and differences have been resolved through mutual consent. Now no dispute remains between the respondent no.2 and the petitioner and so, the proceedings arising out of the FIR in question be brought to an end.

22. In *Gian Singh v. State of Punjab* (2012) 10 SCC 303 the Hon'ble Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

"61. 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 proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the 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 the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

23. The aforesaid dictum stands reiterated by the Hon'ble Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466. The relevant observations of the Hon'ble Apex Court in *Narinder Singh* (Supra) are as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings: 29.1 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 and with caution. 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 the 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 hand, those criminal cases having overwhelmingly and predominantly 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."

24. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 of Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

25. The incorporation of inherent power under Section 482 of Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

26. It is settled law that the inherent power of the High Court under Section 482 of Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of State of Maharashtra through CBI v. Vikram Anatrai Doshi and Ors. and in the case of Inder

Singh Goswami v. State of Uttaranchal has observed that powers under Section 482 of Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

27.It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of B.S.Joshi and others v. State of Haryana and another 2003 (4) SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 of Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 of Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 of Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 of Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable.

28.In the light of the aforesaid, this Court is of the view that notwithstanding the fact the offence under Section 307 of IPC is non-compoundable offence, there should be no impediment in quashing the conviction and sentence, if the Court is otherwise satisfied that the facts and circumstances of the case so warrant. In the facts and circumstances of this case and in view of the affidavit of the respondent No.2, the confirmation of conviction and sentence in question warrants to be put to an end and proceedings emanating thereupon need to be compounded. Undisputedly, offence punishable under Section 307 of IPC is non-compoundable, however, considering the facts and circumstances of the case and in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure, 1973, this Court has power to accept the compromise.

29.I have gone through the FIR as well which was recorded on the basis of statement of the PW1, complainant/victim and the

evidences placed before the trial Court. It gives an indication that the complainant was attacked allegedly by the petitioner/accused because of dispute between the parties in not paying the loan amount, though nature of dispute etc. is not stated in detail. Further except the injured evidence, no other evidences placed and there are serious material contradictions in the evidences of the related witnesses which destroy the case of the Prosecution. However, a very pertinent statement by affidavit appears on record before this Hon'ble Court viz., "respectable persons have been trying for a compromise up till now, which is finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the petitioner/accused on the complainant. In this context when I find that the elders, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. It would, therefore, be unnecessary to drag these proceedings. By taking all these factors into consideration cumulatively and I am of the opinion that the compromise between the parties be accepted.

30. Accordingly, this criminal revision petition is allowed and the conviction and sentence imposed by the trial Court in its judgment dated 08.06.2016 passed in S.C.No.50 of 2015 on the file of the learned Assistant Sessions Judge, Tiruchengode for the offences under section 294(b) of IPC and sentenced to undergo 3 months rigorous imprisonment and under section 307 of IPC sentenced to undergo 7 years rigorous imprisonment and imposed fine of Rs.10,000/- in default to undergo further six months simple imprisonment, is set aside. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar 14.03.2018

vs
To

1. The Sessions Judge,
Fast Track Court, Mahila Court,
Namakkal.

2. The Assistant Sessions Judge,
Tiruchengode.

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3. The Judicial Magistrate
Tiruchengode.
4. The Chief Judicial Magistrate
Namakkal (for information)
5. The Inspector of Police
Tiruchengode Town Police Station
Namakkal District.
6. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 19406.

CRL.R.C.No.1312 of 2017
and
Crl.M.P.No.12753 of 2017

SP(18/02/2019)



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