

BAIL SLIP

The Appellant/Accused Barnabas son of Ravishankar Samuel aged 27 years in Criminal Appeal No. 164 of 2012 was directed to be released on bail as per order of this Court dated 07.03.2012 and made in MP.1 of 2012 in CrI.A. 164 of 2012.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.164 of 2012

Barnabas

...

Appellant /1st Accused

Vs

The State of Tamil Nadu,
rep. by the Inspector of Police,
K1, Sembium Police Station,
Chennai
(Crime No.776/2008)

... Respondent/Complainant

Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment dated 10.12.2012 made in S.C.No.137 of 2010 on the file of the Sessions Judge, Mahalir Neethimandram, Chennai.

For Appellant : Mr.C.V.Kumar

for M/s.D.Daniel Ambrose

For Respondent : Ms.T.P.Savitha

Government Advocate (CrI. Side)

JUDGMENT

This appeal arises out of the judgment in S.C.No.137 of 2010 dated 10.12.2012 on the file of the learned Sessions Judge, Mahalir Neethimandram, Chennai, convicting the appellant/1st accused under Section 417 IPC and sentenced to undergo one year rigorous imprisonment with fine of Rs.50,000/-, in default to undergo one month simple imprisonment.

2. Before the learned Sessions Court, there were three accused. The appellant herein was arrayed as 1st accused and his parents were arrayed as accused Nos.2 and 3. The learned

Sessions Court acquitted the 2nd and 3rd accused from the offences and convicted the appellant under Section 417 IPC and sentenced him as aforesaid.

3. The case of the prosecution is as follows:

The complainant and the appellant/1st accused loved each other and the 1st accused had taken the complainant to park and beach from 2004 to 2006. The fact of loving each other was known to the parents and at one stage, the elders of both the families arranged for their betrothal on 27.1.2007. After betrothal, the 1st accused used to take the complainant to his house. While so, on 17.6.2007, the 1st accused took the complainant to his house when nobody was in his house and taking advantage of the absence of parents, he offered cool drinks by mixing alcohol. When the complainant felt drowsy, without her consent, the 1st accused had forcibly raped her. After an hour when the complainant got her consciousness, she found her clothes were removed and when she questioned, the 1st accused informed that as they were engaged. In any way, they were going to get married and so there was no problem.

3.1. Thereafter, the 1st accused behaviour was indifferent and started avoiding complainant. However, in the month of September, 2007, elders decided to solemnize their marriage and accordingly the marriage was fixed in December 2007. The 1st accused family demanded 30 sovereigns of gold ornaments, bike and house hold articles at the time of marriage. In October, 2007, the 1st accused family came to the complainant's house and demanded jewels, bike and house hold articles and asked the bride family to bear the marriage expenses. Unable to bear, a complaint was lodged with K5 All Women Police Station and the police advised them to go for compromise.

3.2. On 27.1.2008, the 1st accused promised to marry the complainant and he was in touch with her. Later since the complainant felt giddy and stomach pain, parents of the complainant took her to hospital and found that she was pregnant. When the complainant was questioned by per parents, she informed that the 1st accused had sexual intercourse with her without her knowledge. Since the 1st accused threatened her not to inform to others, and if she informs, he threatened that he will not marry her and he would commit suicide, she has not informed the sexual intercourse by the 1st accused. When the pregnancy was informed to the 1st accused, he avoided to meet her. In that circumstances, as an eight month pregnant lady, the complainant lodged a police complaint. Since the police had not taken the case on file, the complainant approached the High Court and pursuant to the order of the High Court, she gave complaint to K1 Police Station on 20.7.2008.

3.3. On receipt of the complaint, the Inspector of Police, K1 Police Station registered the case in Crime No.776 of 2008 under Section 376 IPC and submitted the FIR to the concerned jurisdictional Court. After completing the investigation and on examination of the witnesses and after subjecting the complainant, the 1st accused and also their male child for DNA test, the Inspector of Police filed a final report against the accused for the offence under Section 493, 376 IPC and Section 4 of Dowry Prohibition Act before the learned V Metropolitan Magistrate, Egmore, Chennai.

3.4. The learned V Metropolitan Magistrate, Egmore, Chennai took up the case in P.R.C.No.143 of 2009 and on service of copies to the accused under Section 207 Cr.P.C., he committed the case to the Principal Sessions Judge, Chennai as the same was triable by the Sessions Judge. Thereafter, the learned Principal Sessions Judge, Chennai made over the case to the learned Special Judge, Mahalir Neethimandram, Chennai for trial and disposal.

3.5. Upon receipt of the records, the learned Special Judge, Mahalir Neethimandram framed charges for the offence under Section 493 and 376 IPC and Section 4 of Dowry Prohibition Act against the 1st accused and under Section 4 of Dowry Prohibition Act against the 2nd and 3rd accused. When the accused were questioned, they denied the charges.

3.6. In order to prove the guilt, the prosecution examined 10 witnesses and marked 8 documents. On the side of the accused, nobody was examined, however, 4 documents were marked.

4. Upon consideration of the oral and documentary evidence, the learned Sessions Judge arrived at the conclusion as under:

"47. In the said circumstances, having loved P.W.1 for more than 3 years and having sexual relationship continuously prior to betrothal and after to betrothal and after her conception by saying lame excuse breaking an arrangement to have a marriage in December 2007 and allowing P.W.1 to give birth to a child, without father, amounts to cheating liable to be punished under Section 417 of IPC as the accused had promised to marry and on that promise subjected her for sexual intercourse and given birth to a child and refused to marry."

The learned Sessions Judge further observed as under:

"48. Even though a specific charge was not framed for offence u/s. 417 IPC, which is a minor offence than the charge levelled against the accused u/s 376 IPC. So u/s 220 of Cr.P.C. this court is empowered to alter the charge from major charge to

minor charge to come to just conclusion and deal with the accused on the basis of same materials, in accordance with law. Because of this alteration of charge to a minor charge, no separate evidence is necessary to be let in and on the basis of available materials since the offence u/s 417 is made out and accused is dealt with under section 417 IPC. It no way prejudice to the accused also."

Finally, the learned Sessions Judge arrived at a finding that 1st accused was found guilty for the offence under Section 417 IPC and he was not found guilty for the offences under Section 493 and 376 IPC and Section 4 of the Dowry Prohibition Act. The learned Sessions Judge also held that the 2nd and 3rd accused were not found guilty for the offence under Section 4 of the Dowry Prohibition Act and acquitted them. After questioning the plea of sentence and after considering the reply given by the 1st accused, the learned Sessions Judge imposed sentence as stated supra. Challenging the conviction and sentence imposed on the 1st accused, he had filed the present appeal. As against the acquittal of the appellant for the offence under Section 376 and 493 IPC, no appeal has been preferred by the State.

5. On 05.3.2012, the appeal was admitted. By the order dated 7.3.2012 in C.M.P.NO.1 of 2012, the substantive sentence imposed on the appellant/1st accused was suspended pending disposal of the appeal and the appellant was ordered to be enlarged on bail on condition to execute a bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Neethimandram, Chennai and on further condition that he shall report before the concerned Court every Monday at 10.30 A.M. until further orders. On a perusal of records, it is seen that thereafter, the condition was relaxed and the appeal was periodically listed for hearing.

6. On 26.3.2018, when the appeal was taken up for hearing, the learned counsel for the appellant submitted that the appellant and the complainant have settled the matter amicably out of Court and the appellant was willing to pay a sum of Rs.5.00 lakhs to the complainant and the complainant has also agreed for the same. In view of the submission made by the learned counsel for the appellant, this Court, directed both the appellant and the complainant to be present before the Court on 27.3.2018.

7. Today when the matter is taken up for hearing, both the complainant and the appellant are present and when this Court enquired the complainant, she stated that a compromise had been reached between them and she agreed to receive Rs.5.00 lakhs as full and final settlement. She had also stated that as per the

compromise, the appellant paid Rs.4.25 lakhs by way of Demand Draft on 26.3.2018 and she received Rs.75,000/- by way of cash. The complainant also stated that the compromise has been reduced in writing and she had put her signature in it. Both the appellant and the complainant have filed a joint Memo of Compromise and prayed that recording the compromise, the appeal may be allowed and the conviction and sentence imposed on the appellant may be set aside. The joint Memo of Compromise filed by both the appellant and the complainant is taken on record.

8. The joint Memo of compromise filed by the appellant and the defacto complainant reads thus:

"The petitioner appellant submits that he has been convicted by Mahila court for an offence under section 417 IPC and sentenced to undergo one year RI with fine of Rs.50,000/- in default to undergo further period of one month simple imprisonment by Judgment dated 10.2.2012 and the petitioner has paid the fine amount in No.B 47118 dated 10.2.2012.

2.The petitioner states that he preferred CRL appeal before this Honourable court and now a compromise has been reached by which the defacto complainant agreed to receive Rs.5 Lakhs as full and final settlement and as per compromise the petitioner paid Rs.4,25,000/- by way of DD dated 26.3.2018 bearing No.243131 drawn on State Bank of India, and the remaining Rs.75,000/- has been given by cash and defacto complainant has received the above amount and she wants to compromise the entire issue with the petitioner and the defacto complainant further submits that she has married and has got a child.

3.The petitioner submits that he has paid Rs.50,000/- on 16.2.2012 in B 47118 before Mahila Neethimandram, Chennai 104 towards the credit of SC No.137 of 2010 and he may be permitted to withdraw the amount since he has paid the entire compromised amount to the defacto complainant in full and final settlement and the petitioner prays that the sentence of one year RI may be taken away and he may be acquitted of the charges under Section 417 IPC and render justice."

9. Though the appellant has not filed any application seeking to compound the offence, the learned counsel for the appellant submitted that since the complainant and the appellant have buried their differences and have settled their disputes amicably, recording the compromise arrived at between the

appellant and the victim, the High Court can compound the offence. Since this Court has got ample power to compound the offence by recording the compromise arrived at between the complainant and the accused, without even insisting separate application, this Court is inclined to compound the offence by recording the compromise entered into between the appellant and the complainant/victim.

10. Section 320(2) Cr.P.C. stated that the offence under Section 417 IPC is compoundable. Section 320(2) Cr.P.C. reads thus:

"320(2) The offences punishable under the section of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table.

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Cheating.	417	The person cheated.

Thus, the offence punishable under Section 417 IPC is compoundable offence within the scheme of Section 320 Cr.P.C.

11. Section 320(5) Cr.P.C. provides when the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.

12. Section 320(6) Cr.P.C. provides:

"320(6) A High Court or Court of session acting in the exercise of its power of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

13. In *Gian Singh v. State of Punjab and another*, reported in (2013) 1 SCC (Cri) 160, in which Hon'ble Supreme Court observed as below:

"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 engrafted 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-dominatingly 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."

14. Since the appeal is pending before this Court against the conviction of the 1st accused-appellant, both the appellant and the complainant orally seeking leave of this Court to permit them to compound the offence by way of compromise, for which the 1st accused-appellant has been convicted. Sub-Section (5) of Section 320 Cr.P.C. is meant for those offence, which is compoundable offence within the Scheme of Section 320 Cr.P.C.

15. Considering the nature of offence, in which the appellant has been convicted by the learned Sessions Judge and the subsequent event between the complainant and the 1st accused, the appellant is permitted to compound the offence proved against him without insisting separate application in the facts and circumstances of the case. As a consequence thereof, judgment dated 10.02.2012, passed by learned Sessions Judge, Mahalir Neethimandram, Chennai in Sessions Case No.137 of 2010, is hereby set aside in respect of the appellant/1st accused in terms of the compromise entered into between the parties, i.e., complainant and the appellant/1st accused.

16. In the result, the appeal is allowed. The conviction and sentence recorded by the learned Sessions Judge, Mahalir Neethimandram, Chennai against appellant are set aside. 1st accused-appellant stand acquitted of the charges of Section 417 IPC. Appellant/1st accused was on bail. His bail bond is cancelled and sureties are discharged. The appellant/1st accused is entitled to refund of the fine amount of Rs.50,000/- deposited in S.C.No.137 of 2012. Let a copy of this judgment be sent to the the learned Sessions Judge, Mahalir Neethimandram for reference. It is made clear that in the facts and circumstances of the case and in the interest of justice, without insisting separate application for compounding the offence, this Court recorded the compromise, and compounded the offence. This judgment need not be cited as precedent.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

To

1. The V Metropolitan Magistrate,
Egmore, Chennai.
2. -do thro The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Sessions Judge,
Mahalir Neethimandram,
Chennai.
4. The Superintendent,
Central Prison, Puzhal,
Chennai.
5. The Inspector of Police,
K1, Sembiam Police Station,
Chennai.
6. The Public Prosecutor,
High Court, Madras.
7. The Collector,
Chennai.
8. The Director General of Police,
Chennai.

+2cc to Mr.D.Daniel Ambrose, Advocate SR.No.23392

Criminal Appeal No.164 of 2012

सत्यमेव जयते

GN(29/10/2018)

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