

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.26874 of 2017

S.Martin .. Petitioner

Vs.

1.State rep. by
The Inspector of Police,
T-16, Nasarathpet Police Station,
Poonamallee, Chennai. .. 1st Respondent/Complainant

2.Anguraj ... 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to Crime No.326 of 2011 on the file of the first respondent and quash the same in respect of the petitioner/5th Accused.

For Petitioner : Mr.V.Venkatasamy

For Respondent 1 : Mrs.Kritika Kamal.P,
Government Advocate (Crl. side)

O R D E R

The prayer sought for in the present petition is to quash the proceedings in in Crime No. 326 of 2011 on the file of the first respondent, insofar as the petitioner herein is concerned.

2. Today, when the matter is taken up for consideration, the learned Government Advocate (Crl.side) on instructions and vehemently opposed the petition stating that the petitioner has been charged for offence is that are non compoundable and therefore the petitioners' request for compounding offence should not be permitted.

3. I am not in agreement with the submissions made by the learned Government Advocate (Crl.side) the defacto complainant expresses his or her intention to drop all further proceedings

against the accused, it would not be proper to make the accused to under go the ordeal of either criminal investigation or trial. Further, when the defacto complainant condones the act committed by the accused and even further that if the criminal investigation or trial is not permitted to proceed with, there may not be logical conclusion to implicate the accused for the alleged offence in the absence any co-operation from the defacto complainant.

4. The Hon'ble Supreme Court of India in a Judgment in Unnikrishnan @ Unnikuttan Vs. State of Kerala in CrI.M.P.No.18630 of 2016 dated 01.03.2017 has held that even in case where the offences are not compoundable registered under Section 320 Cr.P.C., compounding can be considered in view of the compromise arrived at between the parties. The relevant portion of the Judgment is as follows:

"6. The short question which ultimately arose during the hearing is whether the offence under Section 394 could at all be compounded since the same is not covered by the provisions of Section 320 Cr.P.C.

7. The aforesaid question has troubled this Court on different occasions, not only in connection with compounding of offences punishable under the criminal justice system, but also in respect of civil matters, and in respect of matrimonial matters in particular, where the Court had to strike a balance between the rigidity of the law and doing substantial justice to the parties.

8. In order to meet certain unusual situations, this Court has from time to time taken recourse to innovations and the powers vested in it under Article 142 of the Constitution, in order to give a quietus to a litigation demanding a pragmatic solution.

9. In the case on hand, the petitioner is convicted for the offence punishable under Section 394 of the IPC and is sentenced to two years Rigorous Imprisonment. We are aware that the said offence is not compoundable within the scope of Section 320 Cr.P.C.

10. In series of decisions i.e. Bharath Singh vs. State of M.P. and ors., 1990 (Supp) SCC 62, Ramlal Vs. State of J & K, (1999) 2SCC 213, puttawamy vs. State of Karnataka and Anr, (2009) 1 SCC 3 711, this Court allowed the parties to compound the offence even though the offence is a non-compoundable depending on the facts and circumstances of each case. In some cases this Court while

imposing the fine amount reduced the sentence to the period already undergone.

11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.

12. Having regard to the facts of the present case, while taking into account the settlement arrived at between the parties and also considering the affidavits filed before us by each one of the applicants by way of joint application, we allow the application seeking permission to compound the offences.

13. The Special Leave Petition is disposed of accordingly."

5. In view of the above observations of the Hon'ble Supreme Court, I am of the considered opinion that the ends of justice would be met by permitting the petitioner to compound the offences in view of the compromise arrived at between parties.

6. It is submitted by the learned counsel for the petitioner that Pending Criminal Original Petition, the defacto complainant and the petitioner have amicably resolved the dispute among themselves and accordingly, they have entered into a compromise.

7. Today, the defacto complainant as well as the petitioner are personally present before this Court and also have been identified. In order to identify themselves, the petitioner and the defacto complainant/2nd respondent have submitted the photo copies of their Identity Cards viz., Martin - Aadhar Card No. 851900941641 and Anguraj - Aadhar Card No. 657461372294 and after verification of the original cards, the same are recorded.

8. An affidavit of the defacto complainant dated 19.12.2017 is also filed to the effect that he has no objection, if the present Criminal Original Petition is allowed, insofar as the petitioner is concerned and compound the offence.

9. Recording the same, the proceedings in Crime No. 326 of 2011 on the file of 1st respondent police is quashed, insofar as the petitioner herein is concerned. The Criminal Original Petition is allowed.

10. The affidavit dated 19.12.2017 filed by the second respondent/defacto complainant shall form part of the order.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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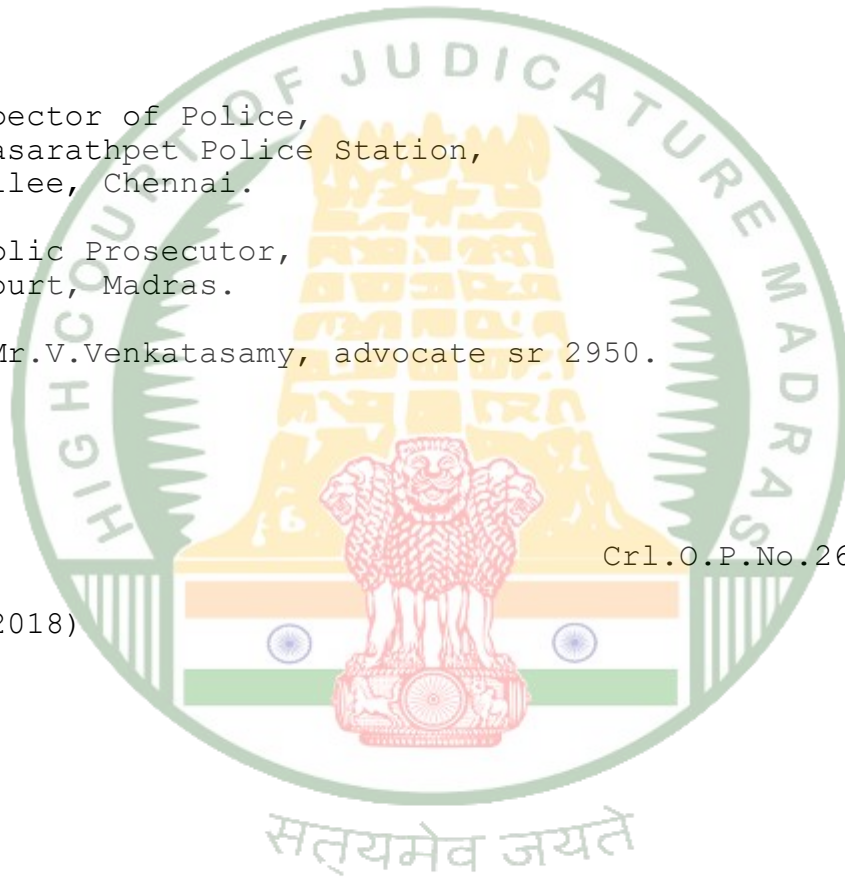
1. The Inspector of Police,
T-16, Nasarathpet Police Station,
Poonamallee, Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.V.Venkatasamy, advocate sr 2950.

Crl.O.P.No.26874 of 2017

SP(07/02/2018)



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