

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.29099 of 2017

1.Madhan

2.Prabha

..Petitioners/Accused 1&2

Vs

State rep. by

1.The Inspector of Police,
Thirunindravur Police Station,
Chennai.
(Crime No.1886/2017)

2.Muthu

...Respondents/Complainant/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to FIR in Crime No.1886 of 2017 on the file of the first respondent and quash the same.

For Petitioners : Mr.T.Muruganantham

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

O R D E R

The prayer sought for in the present petition is to call for the records relating to FIR in Crime No.1886 of 2017 on the file of the first respondent and quash the same.

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 petitioners have 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-oportunity 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 petitioners that Pending Criminal Original Petition, the defacto complainant and the petitioners have amicably resolved the dispute among themselves and accordingly, they have entered into a compromise.

7. In order to identify themselves, the petitioners and the defacto complainant/2nd respondent have submitted the photo copies of their Identity Cards viz., M.Madhan - Aadhar Card No. 478264829239, Prabha - Aadhar Card No. 420982536725 and K.Muthu - Aadhar Card No. 516982756526 after verification of the original cards, the same are recorded.

8. Today, the defacto complainant as well as the petitioners are personally present before this Court and also have been identified. An affidavit of the defacto complainant dated 05.12.2017 is also filed to the effect that the defacto complainant has no objection, if the present Criminal Original Petition is allowed and compound the offence.

9. Recording the same, the proceedings in Crime No. 1886 of 2017 on the file of 1st respondent police is quashed. The

Criminal Original Petition is allowed.

10. The affidavit dated 18.12.2017 filed by the second respondent/defacto complainant shall form part of the order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nmm

To

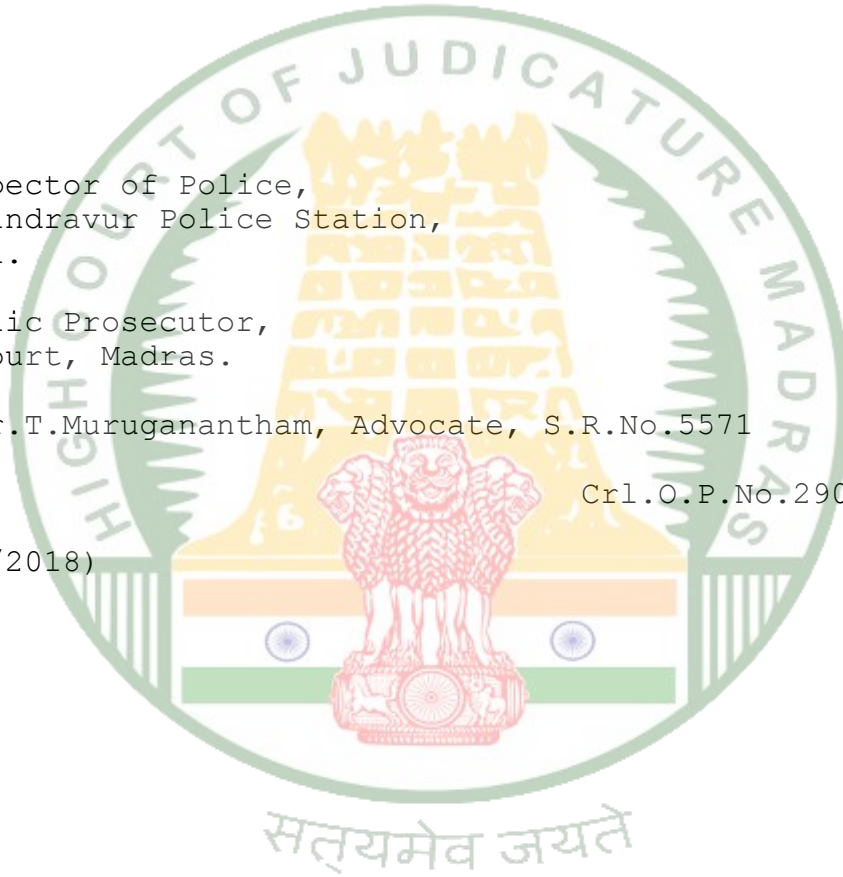
1.The Inspector of Police,
Thirunindravur Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.5571

Cr1.O.P.No.29099 of 2017

KK(CO)
RRK(09/02/2018)



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