

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.493 of 2009

and

Crl.MP.No.10688 of 2019

Sedhu

...Appellant /Single Accused

Vs

State by:

The Inspector of Police,  
Palladam Police Station,  
Palladam,  
Tirupur District  
(Crime No.146/2008)

...Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 (2) of Cr.P.C, against the judgement of conviction dated 24.07.2009 made in S.C.No.318 of 2008 on the file of the learned Additional District Sessions Judge, Fast Track Court No.IV, Coimbatore at Tirupur and acquit him fromm the offence.

For Appellant :Mr.A.Saravanan

For Respondent :Mr.K.Prabakar,  
Additional Public Prosecutor

JUDGMENT

- 1.This Criminal Appeal is filed by the appellant/accused against the judgment of conviction and sentence dated 24.07.2009 made in S.C.No.318 of 2008 on the file of the learned Additional District Sessions Judge, Fast Track Court No.IV, Coimbatore at Tirupur and finding the appellant/accused guilty for the offence under Section 324 of IPC and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine amount of Rs.1000/- with a default sentence of 3 months rigorous imprisonment.
- 2.When the appeal is taken up for hearing today, the learned counsel for the appellant stated that the de facto-complainant and the appellant/accused have compromised the matter and that the de facto-complainant has also condoned the act of the appellant/accused and they have also filed a petition, seeking to compound the offence. In view of the compromise, the appellant has also agreed to pay an amount of Rs.1,00,000/- (Rupees One Lakhs only) as compensation in respect of the

injuries suffered by the complainant in the incident. He would further submit that during the time of investigation the petitioner had suffered incarceration for about 40 days.

3. The learned Additional Public Prosecutor would submit that the appellant/accused has been charged for offence under Section 342 and 307 of IPC and on conclusion of the trial, the learned Trial Judge found him guilty for offences under Section 324 of IPC and sentenced him to undergo 3 years rigorous imprisonment. He would further submit that the offence under Section 324 of IPC is not compoundable as per the statute.
4. The De facto-complainant/PW1 is the injured victim and he is present before this Court and has filed an affidavit wherein he had stated that he had reconciled with the appellant and that he is willing to compound the offence and that he has also condoned the act of the appellant/accused.
5. Now, in this case since the parties have reconciled and compromised the matter between themselves, without delving deep into the facts of this case which in the opinion of this Court may not be necessary to be discussed in view of the compromise, it is seen that immediately after the incident the appellant himself had taken the victim to the hospital for treatment. Further, it is also the evidence that they were having close acquaintance with each other prior to the occurrence.
6. The trial Court, had found the appellant guilty for the offence under section 324 IPC and convicted him to undergo sentence as stated above. The offence under which the appellant has been convicted and sentenced under section 324 IPC is a non-compoundable offence. As per section 320 (9) Cr.P.C, non-compoundable offences falling outside the two tables in under section 320 IPC cannot be compounded even with the permission of the Court. However, the Hon'ble Apex Court in the decisions reported in (2008) 15 SCC 667 [Ishwar Singh Vs. State of Madhya Pradesh], (2013) 11 SCC 511 [Mukesh Kumar and others Vs. State of Rajasthan] and (2015) 11 SCC 137 [Nanda Gopalan Vs. State of Kerala] while holding that it is impermissible to permit for compounding in non-compoundable cases taking into effect of the compromise between parties and also taking into consideration the compensation being paid in some cases had reduced the sentence to the period already undergone by the accused.
7. In a recent decision reported in (2019) 5 SCC 166 [Shankar and others Vs. State of Maharashtra and another] the Hon'ble Apex Court following the earlier decisions had while convicting the appellant, had reduced the sentence to the period already undergone. It would be relevant to refer to the following paragraph of the above judgment:

"10. In Ishwar Singh v. State of M.P.

[Ishwar Singh v.State of M.P., (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] , this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of Ishwar Singh [Ishwar Singh v. State of M.P., (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] it was held as under: (SCC p. 670)

"13. In Jetha Ram v. State of Rajasthan [Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561] , Murugesan v. Ganapathy Velar [Murugesan v.Ganapathy Velar, (2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and Ishwarlal v.State of M.P. [Ishwarlal v. State of M.P., (2008) 15 SCC 671 : (2009) 3 SCC (Cri) 1156] this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v.State of Rajasthan [Mahesh Chand v.State of Rajasthan, 1990 Supp SCC 681 : 1991 SCC (Cri) 159] such offence was ordered to be compounded."

14.In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

8. In the result the present criminal appeal is partly allowed and the conviction is confirmed and the sentence is modified one of the period already undergone by the appellant. The appellant need not surrender. The Bail bond stands cancelled. In view of the compromise the de facto complainant has received the amount of Rs. 1,00,000/- which is also recorded. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

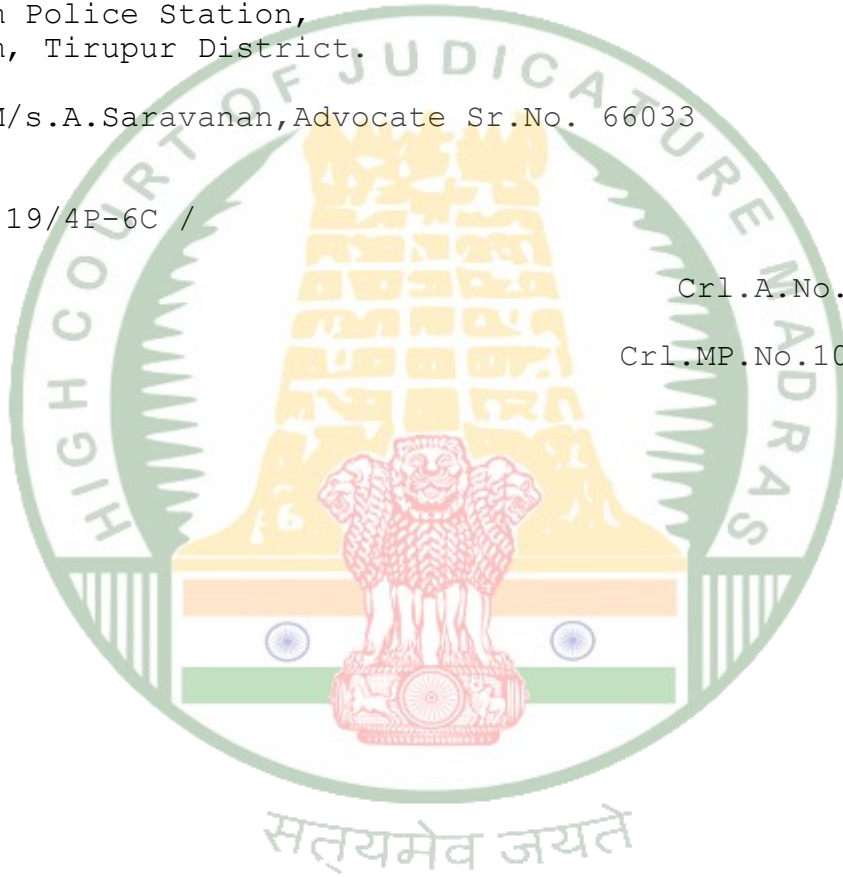
To:

- 1.The Additional District Sessions Judge,  
Fast Track Court No.IV, Coimbatore, Tirupur.
- 2.-Do-Thro' The Principal District and Sessions Judge,  
Coimbatore.
- 3.The Public Prosecutor, High Court, Madras
- 4.The Inspector of Police,  
Palladam Police Station,  
Palladam, Tirupur District.

+1 cc to M/s.A.Saravanan, Advocate Sr.No. 66033

AKM/17.09.19/4P-6C /

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