

Bail Slip

The Appellant/Accused viz., Gurus @ Anthony Gurus, S/o.Dhanishlash, was directed to be released on bail vide this Court order dated 04.02.2016 and made in Cr.MP.No.1320 of 2016 in CrI.RC.No.198 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.198 of 2016

Gurus @ Anthoni Gurus

.. Petitioner/Appellant

Vs

State rep by
The Inspector of Police,
Sathyamangalam Police Station,
Sathyamangalam,
Gingee Taluk,
Crime No.4 of 2011.

.. Respondent/Respondent

Prayer:- This Petition is filed under section 397 read with 401 of Cr.P.C., to call for the records pertaining to the judgment dated 08.11.2015 made in C.A.No.12 of 2015 on the file of the learned II Additional District and Sessions Judge, Tindivanam, confirming the judgement dated 16.03.2015 in C.C.No.174 of 2011 passed by the Learned Judicial Magistrate, Gingee convicting the petitioner under Section 324 of I.P.C and sentencing him to undergo simple imprisonment for six months.

For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Revision Petition has been filed, seeking to call for the records, pertaining to the judgement dated 08.11.2015, made in C.A.No.12 of 2015 by the learned II

Additional District and Sessions Judge, Tindivanam, confirming the judgement dated 16.03.2015, made in C.C.No.174 of 201, by the Learned Judicial Magistrate, Gingee, convicting the petitioner under Section 324 of I.P.C, and sentencing him to undergo simple imprisonment for six months.

2. For the sake of convenience, the parties will be referred to by their names.

3. The facts of the case in a nutshell are as under:

3.1. The case of the prosecution is that on 13.01.2011 at 07.45 p.m., when the petitioner was standing in front of a tasmac shop and he was making noise by using filthy language, the petitioner's wife and son have come there and requested him to come home. The petitioner refused to move from the place and quarrelled with his wife and his son. P.W.2, who was there had advised him to go home. The petitioner, having enraged by the advice of P.W.1, at 08.45 p.m quarrelled with P.W.1 and also assaulted him with a broken brandy bottle and caused simple injury to P.W.1. Based on the complaint given by the P.W.1, a case was registered in Cr.No.4 of 2011, for the offence under Sections 324 of IPC against the petitioner and he was arrested and remanded to custody.

3.2. After completing the investigation, the respondent police had filed a final report in C.C.No.174 of 2011 before the learned judicial Magistrate, Gingee. The Trial Court had framed charges for the offence under Sections 324 of IPC. When questioned, the petitioner has pleaded "not guilty". To prove the case, the prosecution examined ten witnesses P.W.1 to P.W.10 , and marked seven exhibits, Ex.P1 to Ex.P7.

3.3. When the petitioner was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. On behalf of the petitioner, no witness was examined nor any document marked.

3.4. After considering the evidence on record and hearing either side, the Trial court, by judgment and order, dated 16.03.2015 in C.C.No.174 of 2011 had convicted the petitioner under Section 324 of I.P.C, and sentenced him to undergo simple imprisonment for six months. The appeal in C.A.No.12 of 2015 filed by the petitioner was dismissed by the learned II Additional District and Sessions Judge, Tindivanam, on 08.11.2015. Challenging the concurrent findings of the Courts below, the present revision has been filed.

4.This Court, heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

5.The learned counsel for the petitioner would submit that the petitioner and the respondent are relatives and they are living in the same village and that the occurrence had happened in front of the tasmac shop during a quarrel in an inebriated condition and that the occurrence had taken place in the year 2011 and that the petitioner was arrested by the respondent police on 14.01.2011 and he was in prison for 15 days. He would further submit that the petitioner has expressed his remorse and the matter has been compromised between the parties and the petitioner has paid a sum of Rs. 25,000/- as compensation to P.W.1, who has also accepted the said amount. He would further submit that they have arrived at a compromise and they have also filed a memorandum of compromise to that effect that the parties are living peacefully. He would further submit that though the offence for which the petitioner has been convicted is non compoundable in nature, this Court, taking into consideration the compromise between the parties the present peaceful situation in the village and the relationship between the parties may consider for reduction period of sentence to the period already undergone.

6.Ms.N.Premalatha, learned counsel appearing for the defacto complainant/Victim/P.W.2 would submit that the matter has been compromised between the parties and that the defacto complainant has received a sum of Rs. 25,000/- as compensation from the petitioner.

7.The learned Additional Public Prosecutor would submit that the petitioner has been charged and convicted for the offence under Section 324 of IPC which is not compoundable and that the occurrence had taken place during the year 2011 and after the Code of Criminal Procedure (Amendment Act), 2005 came into effect, Section 324 of IPC has been made non compoundable and there by the compounding cannot be accepted.

8.I have perused the judgments of the Courts below and perused the materials available on record. On perusal of the entire evidence, this Court does not find any infirmity or perversity in the judgments of the Courts below, warranting interference. The conviction passed by the Courts below in respect of the offence under Sections 324 of IPC stands confirmed.

9. However while considering the question of compounding and the sentence of imprisonment for offence under Section 324 of IPC, the Hon'ble Apex Court in a recent decision reported in (2019) 5 SCC 166 [Shankar and others Vs. State of Maharashtra and another], following the earlier decisions, while confirming the conviction had reduced the sentence to the period already undergone. It would be relevant to refer to the following paragraphs 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."

10. Further in yet another judgment, reported in 2019 SCC Online SC 896 (Manjit Singh Vs. State of Punjab and another), the Hon'ble Apex Court has held as under:-

"6. Section 307 I.P.C. is a non-compoundable offence. No permission can be granted to record the compromise

between the parties. In *Ishwar Singh v. State of Madhya Pradesh*, (2008) 15 SCC 667, the Supreme Court of India has held that in a noncompoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence. In Paras (13) and (14) of the judgment in *Ishwar Singh* (supra) this Court has held as under:

"13. In *Jetha Ram v. State of Rajasthan*, (2006) 9 SCC 255, *Murugesan v. Ganapathy Velar*, (2001) 10 SCC 504 and *Ishwarlal v. State of M.P.*, (2008) 15 SCC 671, 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*, 1990 Supp SCC 681 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."

7. As noted earlier, in the present case the appellant-accused, *Manjit Singh*, has been sentenced to undergo imprisonment for five years. The appellant is said to have served seventeen months of imprisonment. Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the appellant-accused, the sentence of imprisonment imposed upon the appellant under Sections 307 and 324 I.P.C. is reduced from five years/two years to the period already undergone by him. The appellant is ordered to be released forthwith unless his presence is required in any other case. In view of the compromise entered into between the parties, the fine amount of Rs. 50,000/- imposed upon the appellant is set aside. If the said fine amount has already been paid, the same shall be refunded to the appellant-*Manjit Singh*."

11.This Court is aware of the fact that the petitioner was found guilty and convicted for the offence under Section 324 of IPC, which is non compoundable in nature. In such case, it would not be proper for this Court to take into consideration the compromise arrived between the parties and compound the offences which are not compoundable, ignoring statutory provisions. However, in several matters the Hon'ble Apex Court as well as this Court had taken into consideration the voluntary compromise entered into between the parties as a relevant factor for deciding the quantum of sentence.

12.In the light of the decisions of the Honourable Supreme Court cited supra, taking note of the compromise entered into between the parties, considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the petitioner/accused and that the petitioner has paid compensation of Rs.25,000/-, this Court, while confirming the conviction imposed on the petitioner/accused for the offence under Section 324 of IPC, modifies the period of sentence imposed by the Courts below to the period of sentence already undergone. The petitioner/accused shall not surrender. The bail bonds stand canceled. The affidavits filed by the parties are taken on record.

13.In the result, this Criminal Revision is partly allowed to the extent indicated above.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To:

- 1.The II Additional District and Sessions Judge, Tindivanam.
- 2.The Judicial Magistrate, Gingee.
- 3.The Chief Judicial Magistrate, Villupuram(for information)
- 4.The Inspector of Police,
Sathyamangalam Police Station,
Sathyamangalam, Gingee Taluk,
- 5.The Public Prosecutor, High Court, Madras.

AKM/16.12.19 /6P-6C/

Cr1.R.C.No.198 of 2016