

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.05.2018

Pronounced on : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13888 of 2019

P.Elayaraja

.... Petitioner

Vs.

1.State Rep by:

The Inspector of Police,
All Women Police Station,
Sirkali.
Crime No.8 of 2004.

2.Sulochana

.... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to permit the petitioner and the 2nd respondent to compound the offence, based on the Joint Memo of Compromise relating to the conviction imposed in the Judgment dated 31.10.2007 made in C.C.No.141 of 2005 on the file of the learned Judicial Magistrate, Sirkali, confirmed in the Judgment dated 17.06.2011 made in C.A.No.87 of 2007 on the file of the learned District and Sessions Judge, Nagapattinam which was also confirmed by the order dated 25.01.2019 made in Crl.R.C.No.1082 of 2011 passed by this Court.

For Petitioner : Mr.R.Marudhachalamurthy
For R1 : Ms.S.Thankira
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to compound the offence, based on the Joint Memo of Compromise relating to the conviction imposed in the Judgment dated 31.10.2007 made in C.C.No.141 of 2005 on the file of the Judicial Magistrate Court, Sirkali and confirmed in the Judgment dated 17.06.2011 made in C.A.No.87 of 2007 on the file of the District and Sessions Court, Nagapattinam, confirmed by this Court by order dated 25.01.2019 made in Crl.R.C.No.1082 of 2011.

2. The petitioner is arrayed as A1 in C.C.No.141 of 2005 and he was tried along with five others for the offences under Sections 417, 506(ii) of IPC and Section 4 of the Dowry Prohibition Act. The prosecution examined eleven witnesses and marked nine exhibits. After full-fledged trial, the learned Judicial Magistrate, Sirkali by Judgment dated 31.10.2007 had acquitted A2 to A6 and found the petitioner/A1 guilty for the offence punishable under Section 417 of IPC and Section 4 of the Dowry Prohibition

Act and sentenced him to undergo one year simple imprisonment for the offence under Section 417 IPC and to pay a fine of Rs.2,000/- in default to undergo three months simple imprisonment and to undergo Simple Imprisonment of one year for the offence under Section 4 of the Dowry Prohibition Act and to pay a fine of Rs.3000/- in default to undergo three months simple Imprisonment and also ordered the sentences to run concurrently.

3. Thereafter, the petitioner filed an appeal before the learned District and Sessions Judge, Nagapattinam in C.A.No.87 of 2007. The lower appellate Court had partly allowed the appeal by its Judgment dated 17.06.2011, acquitted the petitioner under Section 4 of the Dowry Prohibition Act and confirmed the sentence under Section 417 of IPC. Aggrieved against the lower appellate Court Judgment, the petitioner filed Criminal Revision in CrI.R.C.No.1082 of 2011 before this Court, which came to be disposed of on 25.01.2019, confirming the Judgment of the lower appellate Court.

4. After the conviction, the petitioner and the 2nd respondent/defacto-complainant viz., Sulochana had entered into a

compromise on 15.05.2019. Based on the compromise, the petitioner seeks to set aside the conviction.

5. The learned counsel for the petitioner submits that the petitioner is convicted for the offence under Section 417 of IPC, which is a compoundable offence as per Section 320(1) of Cr.P.C table (i). The petitioner had appeared before this Court and produced the Joint memo of compromise, which was signed by both the petitioner and the 2nd respondent and also their respective counsels. In support of his contention, the learned counsel for the petitioner relied upon the following Judgments:-

1. *Sabu George and etc. Vs. the Home Secretary, Department of Home Affairs, New Delhi & Anr.* reported in 2011 AIR (ACD) 1304.

2. *O.T.G. Global Finance Ltd. & Ors. Versus Mohan Mandelia & Ors* reported in 2012 Crl.LJ 2008.

3. *D.Simpson and Ors. Versus S.T.Perumal and Ors.* reported in 2014(2) LW (Crl.) 239.

6. In the case of *Sabu George and etc.* cited supra, wherein the power of this Court under Section 482 of Cr.P.C to quash the sentence has enticed the compoundable offence. The parties have settled their disputes

amicably, on satisfying that there are special circumstances, subsequent to the earlier proceedings invoking powers under Section 482 of Cr.P.C can be moved and cannot be thrown away on the technical arguments as to its sustainability.

7. The learned Government Advocate appearing for the 1st respondent Police submitted that based on the revision, compromise cannot be readily accepted and related to the Principal, trial Court, Appellate Court, Revisional Court in *functus officio* subject matter cannot thereafter, exercise powers in view of Section 362 of Cr.P.C. The apex Court in the case of **Mostt.Simrikhia Vs. Smt.Dolley Mukherjee** reported in **1990 Crl.L.J.1599** had categorically held as follows, in the instant case, the power under Section 482 of Cr.P.C have not been sought to be invoked earlier only the revision powers were exercised that is all the more reason why under changed circumstance the exercise under Section 482 of Cr.P.C can be invoked.

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8. In the instant case, when the revision petition was disposed of by this Court, the present circumstances that the parties having settled the disputes and the defacto complainant compounded the offence was not

there at all. It is a subsequent change in circumstance. The decision rendered by the Hon'ble Apex Court in the case of **Mostt.Simrikhia Vs. Smt.Dolley Mukherjee** reported in **1990 Crl.L.J.1599** squarely applies to this case. The offence is compoundable, parties have settled their disputes amicably, defacto complainant has voluntarily compounded the offence.

9. In this case, there has been post revision composition of the offence by the victim, the Jurisdiction under Section 482 of Criminal Procedure Code in the law is available and it is a fit case such powers can and ought to be invoked.

10. In the result, this Criminal Original Petition is allowed, the sentence and conviction on the petitioner shall not be executed.

सत्यमेव जयते

03.06.2019

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order
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NOTE: Issue order copy on 03.06.2019

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To

- 1.The District and Sessions Court,
Nagapattinam.
- 2.The Judicial Magistrate Court,
Sirkali.
- 3.The Inspector of Police,
All Women Police Station,
Sirkali.
- 4.The Public Prosecutor,
High Court Madras.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order in
Crl.O.P.No.13888 of 2019

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