



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.15238 of 2019

Kandasamy ...Petitioner/Petitioner/Appellant

Vs.

1. State rep by
The Inspector of Police,
Nainarkovil Police Station,
Ramanathapuram District.
(Crime No.72/2011)

... 1st Respondent/Respondent/
Complainant

2.Veeraiah

3.Rajammal

... 2nd & 3rd Respondents/
Respondents/Defacto Complainants

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the Additional District and Sessions Judge, Paramakudi, Ramanathapuram District in Cr.M.P.(MD)No.390 of 2019 dated 03.07.2019 and set aside the same and permit the petitioner to compound the offence with the respondents 2 & 3.

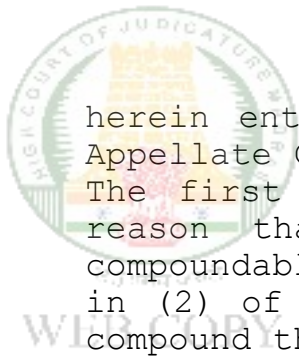
For Petitioner : Mr.K.Mahendran

For R.1 : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

ORDER

This petition has been filed challenging the order passed in Crl.M.P.(MD)No.390 of 2019 dated 03.07.2019 thereby dismissing the petition filed to compound the offence under Section 307 IPC.

2. It is seen that the petitioner was convicted for the offence under Section 307 I.P.C., and he was sentenced to undergo rigorous imprisonment for 5 years along with a sum of Rs.5,000/- towards fine in S.C.No.37 of 2012 on the file of the Sub Court, Paramakudi, by an order dated 12.07.2017. Against which, the petitioner preferred an appeal in Crl.A.No.17 of 2017 on the file of the Additional District and Sessions Judge, Paramakudi. While the appeal is pending, the petitioner and the defacto complainant viz., the second respondent



herein entered into compromise and both filed petition before the Appellate Court to compound the offence under Section 307 of I.P.C., The first Appellate Court dismissed the said application for the reason that the offence under Section 307 I.P.C., is not a compoundable offence as per Section 320 Cr.P.C., neither in (1) nor in (2) of Section 320 Cr.P.C., and that the Court has no power to compound the offence.

3. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in Crl.A.No.1090 of 2019 dated 22.07.2019, and the relevant portion reads thus:-

"5. During pendency of the appeal, parties are said to have compromised the matter. Learned Counsel for the petitioner-Accused and the complainant-Hardip Singh, represented by his counsel Mr.Gopal Singh, Advocate, have filed affidavit dated 15th July, 2019 stating therein that the parties have compromised the matter. The petitioner-Accused has also filed the compromise deed dated 29th May, 2019 entered into between the parties.

6. Section 307 Indian Penal Code is a non-compoundable offence. No permission can be granted to record the compromise between the parties. In Ishwar Singh Vs. State of Madhya Pradesh, MANU/SC/8126/2008 : (2008) 15 SCC 667, the Supreme Court of India has held that in a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstances 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, MANU/SC/2358?2000 : (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 petitioner-Accused to already undergone, though the offences were not compoindable. But it was also stated that in Mahesh Chand V. State of Rajasthan, MANU/SC/0268?1988 : 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 petitioner deserves consideration that while



circumstances which the Court may keep in mind."

4. In view of the above dictum laid down by the Hon'ble Supreme Court, this Court is inclined to direct the First Appellate Court to consider the case of the petitioner in view of the compromise entered into between the petitioner and the second respondent and that the sentence imposed on the petitioner may be considered while disposing the appeal.

5. Considering the above facts and circumstances, the proceedings in Cr.M.P.(MD)No.390 of 2019 on the file of the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District, is hereby set aside and the Criminal Original Petition is allowed.

6. Consequently, the Trial Court is directed to consider the compromise and reduce the sentence of imprisonment imposed on the petitioner for a period of 5 years for the offence under Section 307 of I.P.C., to the period of imprisonment already undergone by the petitioner herein. The First Appellate Court is further directed to release the petitioner forthwith, unless his presence is required in any other case, after notice to the second respondent.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1.The Additional District and Sessions Judge,
Paramakudi, Ramanathapuram District.

2.The Subordinate Judge, Paramakudi.

3.The Inspector of Police,
Nainarkoil Police Station,
Ramanathapuram District.

4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-96190[F] dated 05/11/2019)

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