

**In the High Court at Calcutta
Criminal Appellate Jurisdiction**

**C.R.A. 272 of 2017
With
IA No. C.R.A.N. 1 of 2020
(Old No. C.R.A.N. 800 of 2020)**

In the matter of : Jamal Dafadar and others ...appellants

Mr. Ujjal Roy,
Mr. Satadru Lahiri

...for the appellants

Mr. Rana Mukherjee,
Mr. Imran Ali,
Mr. Mirza Firoj Ahmed Begg

...for the State

Mr. Arpa Chakraborty

...for the de facto complainant

Learned counsel for the appellants as well as the *de facto* complainant contend that both the parties have reached an out-of-court settlement between themselves. It is further submitted by learned counsel for the appellants that this Court has power under Section 320(5) of the Code of Criminal Procedure to compound the offences, although one of the charges was under Section 324 of the Code, which does not fall within the categories mentioned in sub-sections (1) and (2) of Section 320 of the Code of Criminal Procedure.

Learned counsel places reliance on two judgments of the Supreme Court, the first reported at *AIR 1988 SC 2111* (*Mahesh Chand & Anr. vs. State of Rajasthan*) and the

other at (2005) 1 SCC 347 (*Y. Suresh Babu vs. State of A.P. & Anr.*) in support of such proposition.

Learned counsel for the State, by placing reliance on the evidence of the Doctor, that is, P.W. 11, submits that the offence committed by the appellants under Section 324 of the Code of Criminal procedure was established beyond doubt by such evidence.

Be that as it may, since the charges were respectively under Section 324 and Section 448 and are connected by the same chain of events and as the *de facto* complainant and the appellants have reached an amicable settlement between themselves, there is no use to further restrict the personal liberty of the appellants by prolonging their incarceration unnecessarily.

Upon a composite reading of Section 320 of the Code of Criminal Procedure, it is evident that sub section (5) thereof is independent and irrespective of sub sections (1) and (2), the latter sub-sections enlisting the compoundable offences.

Section 320(5) of the Code of Criminal Procedure categorically provides that when the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard. Hence, it is evident that the power of the appellate court in compounding offences is not

circumscribed by the restrictions stipulated in sub-sections (1) and (2) of the said Section itself.

In such view of the matter, I am of the opinion that the offences allegedly committed by the appellants should be treated to be compoundable. As per Section 320(8) of the Code of Criminal Procedure, the composition of an offence under the said Section shall have the effect of an acquittal of the accused with regard to whom the offence has been compounded.

In such view of the matter, C.R.A. 272 of 2017 is disposed of, compounding the offences alleged against the appellants. The appellants shall, accordingly be acquitted immediately.

The superintendent of the concerned correctional home shall act on the basis of the server copy of this order without insisting upon a certified copy thereof.

In case of violation of such mandatory direction, the Superintendent will run the risk of committing contempt of court.

In view of disposal of the appeal itself, the connected application, bearing IA No. C.R.A.N. 1 of 2020 (Old No. C.R.A.N. 800 of 2020) is also disposed of.

Let urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)