



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Cr1.O.P.No.12902 of 2017
and Cr1.M.P.No.8404 of 2017

1.Aswan Singh

2.Oshmand Sushanth D'Cruz

3.Victor Suneeth D'Cruz

... Petitioners/Accused

Vs.

The State rep.by
Inspector of Police
E-2, Royapettah Police Station
Chennai
Crime No.894 of 2013

...Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.A.No.100 of 2016 on the file of the 19th Additional Sessions Judge, Chennai.

For Petitioners : Mr.R.Vijayakumar

For Respondent : Mr.S.Vinoth Kumar
Government Advocate

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.A.No.100 of 2016 on the file of the XIX Additional Sessions Judge, Chennai.

2. It is the contention of the learned counsel for the petitioners that this petition has been filed mainly on the ground that the Trial Court did not accept the compromise petition. It is also to be noted that originally the charge sheet has been filed against the accused for causing grievous hurt for the offences under Section 294(b), 506(i), 325 r/w 34 IPC. However, the Trial Court has acquitted the accused after full trial. The same was challenged before the Sessions Court by



way of two appeals viz., one by State and another by the Defacto Complainant. Both appeals were heard and the Appellate Court has found the accused guilty. The matter was posted for hearing for sentence. In the meanwhile, the accused and the defacto complainant entered into compromise and sought permission of the Appellate Court to compound the offence. The learned Appellate Judge raised the question as to the maintainability of the application since he has found the accused guilty for the offence, against which, the present petition has been filed under section 482 of Cr.P.C.

3. The main contention of the learned counsel for the petitioner is that there is no embargo in law to invoke the provisions under Section 482 of Cr.P.C.

4. This Court has perused the entire materials available on record. Section 320(5) of Cr.P.C makes it clear that when appeal is pending, without permission of such Court, no compromise is permitted. The apprehension of the Appellate Court was that since it has found the accused guilty, when the matter is pending only for passing the sentence, the compromise petition filed to compound offence is not maintainable.

5. It is to be noted that the Hon'ble Apex Court in a judgment reported in (1995) 2 Supreme court cases 513 in the case of "Rama Narang Vs Ramesh Narang, held that under the Criminal Procedure Code, there are two stages in a criminal trial before a Sessions Court, the stage up to the recording of a conviction and the stage post-conviction up to the imposition of sentence. After the conviction is recorded, Section 235(2) of Cr.P.C. inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. After the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under section 374 of the Code.

6. The above judgment makes it clear that only after sentence is awarded to the convicted person, the judgment will be complete. Therefore, apprehension of the Appellate Court, as to maintainability of petition to compound the offence is unwarranted as per the law declared by the Hon'ble Apex Court. Therefore, this Court is of the view that the trial court can very well entertain the compromise petition. Though, this Court would have invoked the jurisdiction under Section 482 of Cr.P.C. and quashed the proceedings based on the compromise by taking note of the relation, but the identity of the parties to enter compromise has to be established only by the Court below.



7. In such view of the matter, the accused are directed to appear before XIX Additional Sessions Judge, Chennai on 25.11.2021 and file a petition for compounding offence since the offence under Section 325 of Cr.P.C. is compoundable as per Section 2 of Cr.P.C. with the permission of the Court, the Appellate Court can entertain the same and pass orders on merits.

8. With the above direction, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msv

To

1. The XIX Additional Sessions Judge, Chennai

2. The Inspector of Police
E-2, Royapettah Police Station
Chennai

3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Vijayakumar, Advocate, S.R.No.59271

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GPL(CO)
CT 03/12/2021