



CrI.R.C(MD)No.77 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 28.02.2023

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC(MD)No.77 of 2019

and CrI.MP(MD)No.1519 of 2019 and 3269 of 2023

Fazeeth Reguman

... Petitioner/Accused

Vs

1.The Inspector of Police,
Tenkarai Police Station, Periyakulam,
Theni District.

2. Nazir
(R2 is impleaded as per order
of the Court, dated 15.02.2023)

... Respondents/Complainants

Prayer: This Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C., praying to set aside the judgment, dated 06.09.2018 in C.A.No.27 of 2016, on the file of Additional District and Sessions Judge, Theni confirming the Judgment, dated 07.04.2016 in S.C.No.47 of 2010, on the file of Assistant Sessions Judge, Periyakulam.

For Petitioner : Mr.Fazil Kirmani
for M/s.Ajmal Associates

For Respondent : Mr.M.Veeranthiran (R1)
Government Advocate (CrI.Side)
Mr.K.M.Karunakaran (R2)



Cr.L.R.C(MD)No.77 of 2019

ORDER

WEB COPY

This Criminal Revision Case has been filed by the revision petitioner to set aside the judgment, dated 06.09.2018 in C.A.No.27 of 2016, on the file of Additional District and Sessions Judge, Theni confirming the Judgment, dated 07.04.2016 in S.C.No.47 of 2010, on the file of Assistant Sessions Judge, Periyakulam.

2.The facts of the case in brief is as follows:

On 02.02.2010 at about 9:20 p.m., when Nazeer/defacto complainant was sitting in a grocery shop and looking after the accounts, the first accused who was having previous enmity and grudge with the complainant on a earlier money transaction had come to the shop of the defacto complainant with knife and made criminal trespass into the shop and stabbed him on his right side head, left side ear, back side of neck and left side thigh by saying that “இத்தோடு தொலைந்து போடா” and caused grievous injuries and escaped in an auto rickshaw bearing Registration No.TN 60 E 3394, which was parked by the second accused outside the shop. Hence, the complaint.

3.(i) The respondent Police, after completing the investigation has filed a final report and the same was numbered as PRC No.8 of 2010, on the file



Cr.L.R.C(MD)No.77 of 2019

of learned Judicial Magistrate, Periyakulam against the petitioner/A1 and yet another accused A2. After furnishing of the records relied on as per provisions under Section 207 of Cr.P.C, the case was committed to the Court of Sessions, ie., Additional Sessions Judge, Periyakulam and the case was taken up for trial in SC.No.47 of 2010. The trial court had framed charges against the first accused under Section 452, 307 of IPC and the second accused under Sections 452 r/w 110, 307 r/w 110 of IPC.

(ii)On the side of the prosecution, PW1 to PW 12 witnesses were examined, Ex.P1 to P 17 and M.O.1 to M.O.15 were marked. The revision petitioner was arrayed as A1 in the case. After completion of trial, the learned Additional Sessions Judge, Periyakulam has found A1 guilty for the offences under Sections 452, 307IPC and convicted and sentenced the petitioner to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment, for a period of one month, for the offence under Section 452 of IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 1,000/-, for the offence under Section 307 of IPC. However, the trial court had acquitted the second accused.

4.Against the conviction and sentence passed against the



Crl.R.C(MD)No.77 of 2019

petitioner, petitioner/A1 had preferred an appeal before the learned Additional District Judge, Theni in C.A.No.27 of 2016. The learned Appellate Judge had dismissed the Appeal on 06.09.2018 and confirmed the conviction and sentence passed against the petitioner. Challenging the said Judgment, the present revision has been preferred by the petitioner.

5.Heard the learned counsels on either side and perused the materials available on record.

6.Mr.Fazil Kirmani, the learned counsel appearing for the petitioner would submit that the fact remains that it is a case, where the petitioner and the defacto complainant are close relatives. The defacto complainant is none other than the first cousin of his mother. The alleged occurrence stated to have taken place due to family feud and later on the intervention of elders and relatives in the family, now, the matter has been compromised between themselves and compounding application has also been filed. The defacto complainant, being the uncle of the petitioner has pardoned the petitioner and he has also compounded the issue with the petitioner. He has filed a compromise petition in Crl.MP(MD) No. 2710 of 2023 before this Court and he had also prayed to acquit the revision petitioner, based on the compromise memo. He would



Cr.L.R.C(MD)No.77 of 2019

further submit that the petitioner was 19 years at the time of occurrence and he had committed the offence without understanding the consequences and now he had expressed his regret. He has also sought for apology from his uncle. The uncle, who is the defacto complainant he also pardoned the petitioner.

7.Today, both the defacto complainant and the petitioner have appeared before this court. This Court enquired the defacto complainant. The defacto complainant submitted that the petitioner is his nephew and that the occurrence was happened due to family feud and he has also pardoned his nephew. His nephew has also expressed his remorse and they have also forgotten the earlier issue and now they are living peacefully with their families.

8.The learned counsel for the petitioner would submit that apart from this case, no case is pending against the petitioner. During the period of investigation, the petitioner has suffered incarceration for about 18 days and after conviction he was suffered imprisonment for a period of 15 days, ie., totalling to 33 days. Now, the petitioner is married and having a child. He is the sold bread winner of his family. He would submit that taking into consideration of the compromise entered between the parties, the Revision may be allowed and the petitioner may be acquitted.



CrI.R.C(MD)No.77 of 2019

WEB COPY

9.The learned Government Advocate (CrI.Side) would submit that though the petitioner and the defacto complainant are relatives, the petitioner has been charged for the offence under Sections 452, 307 of IPC, which are not compoundable in nature. However, on instruction, he would submit that the petitioner and the defacto complainant and close relatives and they have compromised their dispute among themselves and both families are living together amicably.

10.This Court also enquired the Station House Officer of the respondent Police, who was present before this court. On enquiry, he has submitted that the petitioner and the defacto complainant are close relatives and they are living amicably and they have settled their issues.

11.Mr.K.M.Karunakaran, the learned counsel for the second respondent would submit that the petitioner and the defacto complainant have compromised the matter and they are living with their families amicably. Hence, he would pray that revision may be allowed and the petitioner may be acquitted based on the compromise memo.



WEB COPY

12.It is a case, where the petitioner has been found guilty for the offence under Sections 452, 307 of IPC. This Court is aware that the petitioner was convicted for offences, which are non-compoundable and in such circumstance, it would not be proper to compound the offences which are non-compoundable ignoring the statutory provisions. However in several matters the Hon'ble Apex Court as well as this Court had held that the voluntarily compromise entered into between the parties can be taken as the relevant factor for consideration of quantum of sentence.

13.The Hon'ble Apex Court in a recent decision reported in **2019(5) SCC 166 Shankar and others V. State of Maharashtra and another**, by referring to various earlier decisions, taking into consideration the compromise entered between the parties in non compoundable offences and had reduced the sentences. It would be relevant to refer to the following paragraphs of the above judgment:

“9.The appellants have filed a memo of compromise stating therein that they have compromised the matter with the second respondent Namdeo (complainant). Mr.Shakul R.Ghatole, learned counsel appearing for the second respondent has stated that the second respondent Namdeo (complainant) is an aged person and he has reconciled with his brother Appellant 1, Shankar



WEB COPY



Cr.L.R.C(MD)No.77 of 2019

Harale and voluntarily entered into compromise and submitted that the said compromise be taken into consideration.

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.”

WEB COPY

13.Subsequently, the above view has also been approved by three Judges Bench in a later decision in ***Murali Vs State rep. by the Inspector of Police***, reported in **2021(1)SCC 726**. It is held as follows:

“8. There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 (“CrPC”) does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants’ offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.

9. In somewhat similar circumstances where the parties decided to forget their past and live amicably, this Court in Ram Pujan v. State of UP [(1973) 2 SCC 456], held as follows:

“6. The only question with which we are concerned, as mentioned earlier, is about the sentence. In this respect we find that an application for compromise on behalf of the injured prosecution witnesses and the appellants was filed before the High Court. It was stated in the application that the appellants and the injured persons, who belong to one family, had amicably settled their dispute and wanted to live in peace. The High Court thereupon referred the matter to the trial court for verification of the compromise. After the compromise was got verified, the High Court



passed an order stating that as the offence under Section 326 of the Penal Code, 1860 was noncompoundable, permission to compound the offence could not be granted. The High Court all the same reduced the sentence for the offence under Section 326 read with Section 34 of the Penal Code, 1860 from four years to two years.

7. The appellants during the pendency of the appeal were not released on bail and are stated to have already undergone a sentence of rigorous imprisonment for a period of more than four months. As the parties who belong to one family have settled their dispute, it is, in our opinion, not necessary to keep the appellants in jail for a longer period. The major offence for which the appellants have been convicted is no doubt noncompoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our opinion, meet the ends of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone provided each of the appellants pays a fine of Rs.1500 in addition to the period of imprisonment already undergone for the offence under Section 326 read with Section 34 of the of the Penal Code, 1860. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under Section 326 read with Section 34 of the of the Penal Code, 1860. Out of the fine, if realised, Rs.2000 should be paid to Ram Sewak and Rs. 2000 to Ram Samujh as compensation. We order accordingly.” (emphasis supplied)



10. *The aforesaid view has been consistently followed by this Court including in Ishwar Singh v. State of MP [(2008) 15 SCC 667], laying down that:*

“13. In Jetha Ram v. State of Rajasthan [(2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561] , Murugesan v. Ganapathy Velar [(2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and Ishwarlal v. State of M.P. [(2008) 15 SCC 671 : JT (1988) 3 SC 36 (1)] 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 : 1991 SCC (Cri) 159 : AIR 1988 SC 2111] 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.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail



but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused 1) is reduced to the period already undergone.” (emphasis supplied)

11. In later decisions including in Ram Lal v. State of J&K, [(1999) 2 SCC 213], Bankat v. State of Maharashtra, [(2005) 1 SCC 343], Mohar Singh v. State of Rajasthan [(2015) 11 SCC 226], Nanda Gopalan v. State of Kerala [(2015) 11 SCC 137], Shankar v. State of Maharashtra, [(2019) 5 SCC 166], this Court has taken note of the compromise between parties to reduce the sentence of the convicts even in serious non compoundable offences.

12. Given this position of law and the peculiar circumstances arising out of subsequent events, we are of the considered opinion that it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants. We say so because: first, the parties to the dispute have mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, this is a fit case for reduction of sentence.”



Crl.R.C(MD)No.77 of 2019

14.In this case also, at the time of incident, the victim was aged about 19 years and the attack was in sequel to the family dispute between the parties. Due to intervention of elders and family members, the parties have buried their hatchet and amicably settled their issues. The defacto complainant also submitted that he has pardoned the petitioner. The defacto complainant is aged about 60 years and the petitioner is aged about 32 years. In the opinion of the Court it is a fit case for reduction of sentence.

15.In view of the above, this Criminal Revision Case stands partly allowed, while confirming the conviction and sentence imposed against the petitioner for the offence under Sections 452 and 307 of IPC, the sentence and the imprisonment imposed upon the petitioner is modified and reduced to the period of sentence, already undergone by the petitioner. The petitioner did not have to surrender before the Court. Consequently, connected miscellaneous petition is closed.

28.02.2023

PNM



CrI.R.C(MD)No.77 of 2019

To

1. The Additional District and Sessions Judge, Theni
2. The Assistant Sessions Judge, Periyakulam.
3. The Inspector of Police,
Tenkarai Police Station, Periyakulam,
Theni District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C(MD)No.77 of 2019

A.D.JAGADISH CHANDIRA, J.

PNM

ORDER IN

Crl.RC(MD)No.77 of 2019

and Crl.MP(MD)No.1519 of 2019 and 3269 of 2023

28.02.2023