



Crl.R.C.(MD).No.964 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.964 of 2023

1.S.Suresh

2.Makesh

... Appellants/Accused Nos.3 & 4

Vs.

The State of Tamil Nadu Represented by its
Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.
(Crime No.61 of 2010)

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the Judgment 21.03.2023 in Crl.A.No.66 of 2016 on the file of the Learned Additional District and Sessions Judge (Fast Track) Nagarcoil, Kanyakumari District confirming the Judgment in S.C.No.45 of 2011 dated 19.10.2016 on the file of the II Additional Assistant Sessions Judge, Nagarcoil under section 307 of Indian Penal Code, 1860, in Crime No.61 of 2010 on the file the Respondent Police and set aside the same and Acquit the Appellants/Accused No.3 & 4.



Crl.R.C.(MD).No.964 of 2023

For Petitioners : M/s.T.Seeni Syed Amma
for M/s.Lajapathi Roy and Associates.

For Respondent : Mr.R.Sivakumar,
Government Advocate(Crl.Side)
Mr. G.Karthik, for the victim

ORDER

This petition has been filed to set aside the judgment passed by the learned Additional District and Sessions Judge (Fast Track) Nagarcoil, Kanyakumari in Crl.A.No.66 of 2016, District 21.03.2023, confirming the Judgment in S.C.No.45 of 2011 dated 19.10.2016 on the file of the II Additional Assistant Sessions Judge, Nagarcoil.

2.1. The son of the defacto complainant borrowed a sum of Rs.2,000/- from the Male Self Group functioning in his village and he failed to repay the same. Hence, the petitioners went to the house of the complainant and criminally intimidated her, her husband and her daughter. Hence, the defacto complainant immediately arranged the said amount and paid the same in the self help group meeting. However, the petitioners are said to have assaulted the husband of the complainant with aurval and made cut injuries. On receipt of complaint lodged by the complainant, a case was registered in Crime No.61 of 2010.



Crl.R.C.(MD).No.964 of 2023

WEB COPY

2.2. After completion of investigation, final report was filed before the II Additional Assistant Sessions Judge, Nagarcoil, and the same was taken on file in S.C.No.45 of 2011. After considering oral and documentary evidence, the learned trial Judge, convicted the petitioner and the other accused under Section 307 of IPC and sentenced them to undergo 7 years Rigorous Imprisonment each and to pay a fine of Rs.5,000/- each in default to undergo 3 months Simple Imprisonment each.

2.3. Aggrieved against the same, they filed an appeal in Crl.A.No.66 of 2016, before the Additional District and Sessions Judge (Fast Track) Nagarcoil, Kanyakumari in District. The learned Appellate Judge also confirmed the same. Hence, the petitioner preferred this revision before this Court. Challenging the same, the petitioners filed this revision.

3. Today (25.09.2023), when the matter is taken up for hearing, both counsel on record would submit that the the matter has been amicably settled between the parties and they have already filed joint compromise memo dated 22.09.2023, which is extracted here under:-



Crl.R.C.(MD).No.964 of 2023

WEB COPY

2

JOINT COMPROMISE MEMO

1. The Appellants and the Defacto Complainant had filed this Compromise memo based on the amicable settlement arose between the parties.
2. That the Appellants and the Defacto complainant are relatives and settled this matter with the ~~negotiation~~ of the family elders.
3. That the instant Criminal Revision is preferred against the Judgment dated 21.03.2023 in Cri.A. No. 66 of 2016 on the file of the Learned Additional District and Sessions Judge (Fast Track) Nagercoil, Kanyakumari District in S.C.No.45 of 2011 on the file of the II Additional Assistant Sessions Judge Nagercoil under section 307 of Indian Penal Code, 1860 in Crime No. 61 of 2010 on the file the Respondent Police.
4. That the prosecution case is that the accused persons were all members of Malar trade welfare scheme their the PW1 had received loan of Rs2,000/- from the 3rd and 4th accused persons and PW1 refused to returned the same and hence motive was raised then all the accused persons were attacked the Defacto Complainant/Pw1 with a billhook machete and he sustained severe injuries hence the Trial court convicted them for offences under section 307 of Indian Penal Code, 1860 for punishment of seven years and fine of Rs.5,000/- in case of failure they have to undergone three months imprisonment.
5. That these appellants would not indulge in any criminal activities in future and would not cause any civil and criminal cases against each other.

Therefore it is most respectfully prayed that this Hon'ble Court may be pleased to record this Joint Compromise Memo as part and parcel of this criminal appeal in Cri.A. No. 66 of 2016 dated 21.03.2023 on the file of the Learned Additional District and Sessions Judge (Fast Track) Nagercoil, Kanyakumari

7



Crl.R.C.(MD).No.964 of 2023

WEB COPY

3

District in S.C.No.45 of 2011 on the file of the II Additional Assistant Sessions Judge Nagarcot in Crime No. 61 of 2010 on the file the Respondent Police and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render Justice.

Dated at Madurai this 19th day of September 2023

1. B. A. / L. P. / P.

1. S. S. / G. / M.

2. B. N. / J. / S.

2. S. S. / G. / M.

3. S. P. / S. / S.

4. S. P. / S. / S.

Victims

Appellants

M. S. / P. / P.

M. S. / P. / P.
Counsel for Appellants
(S. R. / S. / S.)
No. 1842 / 2023

Counsel for the Victim

G. KARTHIK
MS 1531 / 2018



Crl.R.C.(MD).No.964 of 2023

WEB COPY

4.The contents of the above joint compromise memo are read over and explained to both the parties and they would admit the same. The joint compromise memo filed by both the parties is recorded.

5. The injured witness is the member of the self help group and obtained a loan and failed to repay the amount. One of the accused party is the leader of the said group. The loanee is liable to repay the amount. Therefore, they demanded repayment and in that process there was a scuffle and the petitioners caused injuries because of sudden outburst of anger. Now the parties have settled the issues and there is no previous case pending against the petitioners. Considering the above special circumstances, their case comes under the following ration laid down by the Hon'ble Supreme Court in the case of ***Murali vs. Inspector of police*** reported in ***2021 (1) SCC 726***.

“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.

10. *In somewhat similar circumstances where the parties decided*



Crl.R.C.(MD).No.964 of 2023

to forget their past and live amicably, this Court in **Ram Pujan v. State of UP [(1973) 2 SCC 456]**, held as follows: (SCC p. 458, paras 6-7)

“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 non-compoundable, 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



Crl.R.C.(MD).No.964 of 2023

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)

11. The aforecited view has been consistently followed by this Court including in Ishwar Singh v. State of MP [(2008) 15 SCC 667], laying down that:(SCC p. 670 paras 13-15)

“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 appellantaccused 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 :



Crl.R.C.(MD).No.964 of 2023

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*



Crl.R.C.(MD).No.964 of 2023

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.”

6. Applying the above principle, this Court is inclined to allow to compound the offence and inclined to sentence the Revision Petitioners to a sentence of imprisonment which they have already undergone.

7. Accordingly, this Criminal Revision case is partly allowed. The conviction and sentence passed by the learned II Additional Assistant Sessions Judge, Nagarcoil, in S.C.No.45 of 2011 dated 19.10.2016, and confirmed by the learned Additional District and Sessions Judge (Fast Track) Nagarcoil,



Crl.R.C.(MD).No.964 of 2023

Kanyakumari, in Crl.A.No.66 of 2016, dated 21.03.2023, is hereby confirmed.

But the sentence of imprisonment alone is reduced to the period already undergone by the revision petitioners. Bail bond if any, executed by them shall stand cancelled.

25.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The Additional District and Sessions Judge (Fast Track)
Nagarcoil, Kanyakumari District.
- 2.The II Additional Assistant Sessions Judge,
Nagarcoil.
- 3.The Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.
- 4.The Superintendent,
Central Prison,
Palayamkottai,
Tirunelveli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD).No.964 of 2023

K.K.RAMAKRISHNAN, J.

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Crl.RC(MD)No.964 of 2023

25.09.2023