

(2011) 07 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal R.C. M.P. No. 1835 of 2011 and Criminal RC. No. 2030 of 2004

Asi Balayya (A1) and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Criminal Procedure Code, 1973 (CrPC) — Section 235(2), 320(1), 397, 401, 482
Penal Code, 1860 (IPC) — Section 148, 149, 307, 324, 326

Citation : (2011) 07 AP CK 0035

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : T. Prasanna Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

G. Krishna Mohan Reddy, J.—The revision petition is filed u/s 397 and 401 Code of Criminal Procedure against common judgment made in CrI. A. Nos. 91 and 94 of 1999 dated 7.12.2004 on the file of the Court of II Additional District and Sessions Judge (Fast Track Court), Srikakulam confirming conviction and sentence imposed in Sessions Case No. 116 of 1994 dated 7.7.1999 on the file of Assistant Sessions Judge, Sompeta, Srikakulam district.

2. The second Respondent in the case gave report to Itchapuram Police Station, Srikakulam district basing upon which, the case was registered in Cr. No. 47 of 1992 for the offences punishable under Sections 148, 326, 324 and 307 Indian Penal Code against the revision Petitioners (A1 to A6) and they were tried accordingly before the Assistant Sessions Judge, Sompeta and were found guilty of committing the offences punishable under Sections 148, 324 and 326 Indian Penal Code and accordingly they were convicted u/s 235(2) Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for one year for the offence punishable u/s 148 Indian Penal Code and further A1 to A4 were

sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- and in default of payment of the fine amount, to suffer simple imprisonment for a period of three months for the offence punishable u/s 326 Indian Penal Code and further A2, A5 and A6 were sentenced to suffer rigorous imprisonment for a period of one year for the offence punishable u/s 324 Indian Penal Code each while acquitting them of the charge punishable u/s 307 Indian Penal Code, whereas consequently, they preferred the Crl. A. Nos. 91 and 94 of 1999 on the file of the II Additional District Sessions Judge (Fast Track Court), Srikakulam which were dismissed confirming the convictions and sentences imposed by the trial Court and being aggrieved by that, Crl. R.C. No. 2030 of 2004 was filed, which was also dismissed by order dated 28.1.2010 and being aggrieved by the same, the revision Petitioners filed Special Leave Petition, which was also dismissed by the Hon''ble Supreme Court on 25.10.2010. Now the revision Petitioners have filed the present Crl. R.C. M.P. No. 1835 of 2011 u/s 482 read with Section 320 Code of Criminal Procedure to review the matter and to free the revision Petitioners by way of compounding the offences.

3. It is the claim of the revision Petitioners that all of them and the second Respondent are the residents of same village and in order to have cordial relations between them, elders of the village came forward and advised them to settle the matter for the purpose of maintaining peace between them and to end their disputes and accordingly they entered into a compromise to compound the offences and further this Court has got authority to review the matter even subsequent to the dismissal of SLP before the Hon''ble Supreme Court by virtue of Order 47 Rule 1 CPC and it is also contended that Section 326 Indian Penal Code is compoundable subject to obtaining necessary permission from the Court.

4. Therefore, the point for consideration is whether the judgment delivered by the Hon''ble Supreme Court can be reviewed at this stage and then the parties can be permitted to compound the offences.

5. No provision has been shown to the effect that the judgments delivered in criminal cases can be reviewed. Further, Order 47 Rule 1 CPC has no application so far as the criminal cases are concerned. Further, u/s 320(1) Code of Criminal Procedure certain offences can be compounded without the permission of the court, while u/s 320(2) Code of Criminal Procedure certain offences can be compounded with the permission of the Court which does not include Section 326 Indian Penal Code. In fact, Section 320(1) and (2) Code of Criminal Procedure read as under:

Section 320 Code of Criminal Procedure - Compounding of offences

(1) The offences punishable under the sections of Indian Penal Code, 1860, specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

TABLE

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(2) The offences punishable under the sections of Indian Penal Code, 1860, specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table.

TABLE

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(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner. (3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under Sections 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.

(5) 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.

(6) A High Court or Court of Session acting in the exercise of its powers of revision u/s 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section. Corresponding old law.-Section 345 of the Code of Criminal Procedure, 1898.

6. Consequently, Section 320(1) Code of Criminal Procedure does not specify at what stage an offence which can be compounded thereunder can in fact be compounded, whereas Section 320(2) Code of Criminal Procedure clearly provides as to at what stage any of the offences prescribed thereunder can be compounded as it clearly reads that it can be done with the permission of the Court before which any prosecution for such offences is pending and Clause (5) clearly provides that when an appeal is pending against conviction in respect of an offence composition of it can be allowed either before the appellate Court or before the trial Court which must be subject to the leave of the appellate Court and Clause (6) provides that the High Court or Court of Session while exercising its power of revision u/s 401 Code of Criminal Procedure can allow any person to compound any offence subject to his competency to do so. There is no provision which provides that such a composition can be done even after the final disposal of a criminal case which is covered by either Clause (1) or Clause (2).

7. The overall reading of the provisions enumerated makes it very clear or implies that in order to compound an offence in a criminal case the basic rule is that it should be pending before the trial Court or the appellate Court or the revisional Court as the case may be. Clause (1) is to be read together with the other clauses with regards to the stage of compounding an offence, subject to the satisfaction of required formalities.

8. When that is the position the question of compounding the offences in respect of which the Petitioner was convicted and sentenced before this Court does not arise at all because the corresponding criminal case was already disposed of finally. Therefore, the plea of the Petitioner to do so is to be rejected even supposing that Section 326 Indian Penal Code is compoundable.

9. Further, significantly Section 326 Indian Penal Code does not come under the purview of either Section 320(1) Code of Criminal Procedure or u/s 320(2) Code of Criminal Procedure which really rules out the question of compounding of the same offence.

10. In the result, the petition is dismissed.