

(2020) 01 JH CK 0270
In the Jharkhand High Court
Case No : Criminal Revision No. 240 Of 2003

Bhadu Gope And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 313, 326
Code Of Criminal Procedure, 1973 — Section 320

Citation : (2020) 01 JH CK 0270

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Shekhar Pd. Sinha, Moti Gope, Meena Kumari

Final Decision : Disposed Of

Judgement

The instant application is directed against the judgment dated 21.03.2003, passed by the learned District & Additional Sessions Judge-III, Dhanbad in Cr. Appeal No.25 of 1999, whereby the appeal preferred by the petitioners, has been dismissed and the judgment of conviction and order of sentence dated 08.02.1999, passed by the learned Judicial Magistrate 1st Class, Dhanbad, whereby the petitioners were convicted under Section 326/34 IPC and were directed to undergo RI for a term of 3 years for the said charge, has been affirmed.

The learned counsel for the petitioners submits that a compromise petition was filed by the informant before the learned Fast Track Court in S.T. Case No.302/1994 (counter case) in the year 2003 that due to the intervention of well wishers and co-villagers, the parties had settled their dispute and differences amicably and have compromised the present case and counter case filed against each other. The learned counsel for the petitioners further submits that this is a very old case and both the parties do not want to proceed in the matter. He further submits that since 326 IPC being non-compoundable offence as such, this Hon'ble Court may take a lenient view noting the fact that both the parties do

not want to pursue this case.

Per contra, the learned APP supports the impugned order, however, the learned counsel for the O.P. No.2-informant fairly admitted the submission made by the petitioners and submits that he does not want to oppose the prayer of the petitioners as they have amicably settled their disputes outside the Court.

Heard learned counsel for the petitioners and the learned APP for the State and also the learned counsel for the O.P. No.2.

It is true that the offence for which the petitioners have been convicted is no doubt non-compoundable offence but the fact of compromise can be taken into account in determining the quantum of sentence as held by the Hon'ble Apex Court in the case of Ram Pujan versus State of U.P. reported in 1973 Vol 2 SCC 456 wherein the Hon'ble Apex Court has laid down the law as under:

"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 non-compoundable, 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 Indian Penal Code. 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 Indian Penal Code. 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."

Similar view was taken by the Hon'ble Apex Court in the case of Hasi Mohan Barman v. State of Assam, reported in (2008) 1 SCC 184 : (2008) 1 SCC (Cri) 161, at page 187 : wherein the law has been laid down as under:

"8. Section 320 of the Code of Criminal Procedure says that the offences punishable under the sections of the Penal Code (45 of 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. A perusal of Section 320 will show that the offence under Section 313 IPC is not compoundable. Therefore, the consent given by the wife, PW 1 or the affidavit filed by her cannot be utilised for the purpose of recording a finding of acquittal in favour of the appellants-accused.

9. There are some decisions of this Court wherein the factor of compromise between the accused and the complainant (or injured or person aggrieved) has been taken into consideration for reducing the sentence.

10. The first decision on this point was rendered by this Court in *Ram Pujan v. State of U.P.* wherein the trial court had convicted the accused under Section 326 IPC which is a non-compoundable offence and had sentenced the accused to four years' RI. The High Court took into consideration the compromise between the appellant-accused and the injured and reduced the sentence to two years' RI. This Court, after observing that the fact of compromise can be taken into account for determining the quantum of sentence, reduced the sentence to the period already undergone which was little more than four months and further imposed a fine of Rs 1500 on each of the appellants. *Surendra Nath Mohanty v. State of Orissa* is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate contained in Section 320 CrPC an offence can be compounded only in accordance with the provisions of the said section. The Court followed the view taken in *Ram Pujan* and having regard to the fact that the parties had compromised and a period of ten years had elapsed from the date of the incident reduced the sentence of five years' RI imposed under Sections 307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs 5000.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been reduced mostly to the period already undergone and they are *Bankat v. State of Maharashtra*, *Badrilal v. State of M.P.* and *Jetha Ram v. State of Rajasthan*.

12. Following the view taken in the abovenoted cases we are of the opinion that the complainant and the principal accused having already married it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The conviction of the appellants under Section 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten months. The fine imposed upon the appellants is also set aside. The appellants are on bail. Their sureties and bail bonds are discharged."

In this background and settled proposition of law and in view of the specific submissions of the learned counsel for the O.P. No.2 -informant that parties have settled their dispute and do not want to press this case and further due to the fact that both the parties belongs to one family, in my considered opinion it is not necessary to send the petitioners back to custody and interest of justice would be met if sentence of imprisonment awarded to the petitioners is reduced to the period already undergone provided the petitioners pays a fine of Rs.5,000/- jointly.

As a result, the judgment of conviction passed by the learned trial court and upheld by the learned appellate court is, hereby, confirmed. However, the sentence passed by the Court below is, hereby, modified to the extent that the petitioners are sentenced to undergo for the period already undergone subject to the payment of fine of Rs. 5,000/- jointly.

It is made clear that the petitioners shall pay the aforesaid fine of Rs.5,000/- jointly within a period of 3 months from today before the learned Secretary, DLSA, Dhanbad.

With the aforesaid observations, directions and modification in sentence only, this revision application is disposed of.

The petitioners shall be discharged from the liability of their bail bonds, subject to fulfillment of aforesaid condition.

Let the lower court record be sent back to the court concerned forthwith.

Let the copy of this order be communicated to the court below and the Secretary, DLSA, Dhanbad and also to the petitioners in this case namely, Bhadu Gope, Binod Gope and Subhash Gope through the officer-in-charge of concerned police station.