
(2015) 04 JH CK 0128

In the Jharkhand High Court

Case No : Criminal Revision No. 909 of 2012

Biplav Kumar Rai and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 320, 397, 401
Penal Code, 1860 (IPC) — Section 109, 120-B, 34, 341, 406

Citation : (2015) 2 JLJR 544

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Subodh Kumar Jha, for the Appellant

Final Decision : Allowed

Judgement

Ravi Nath Verma, J—The prayer in this Revision Application filed under Sections 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as "the Code"), on behalf of the petitioners, was to set aside the order dated 4.2.2010 passed by Judicial Magistrate, 1st Class, Jamshedpur in Complaint Case No. C/1-764/2008 whereby and whereunder the petition filed by the petitioners for their discharge under Section 245 of the Code has been rejected. The present opposite party No. 2 filed the above complaint case before the Chief Judicial Magistrate at Jamshedpur under Sections 406/420/468/469/471/109/500/467/506/341/34 of the Indian Penal Code against the petitioners and after enquiry as contemplated in the Code, the court took cognizance of the offence under Sections 406, 420, 468, 506, 109 and 120-B of the Indian Penal Code against the petitioners.

2. The allegation in the complaint petition was that the present opposite party No. 2 had made certain investment in the share/stock market whereafter the petitioners persuaded him to become the member of their firm and assured to provide better concessions and facilities in comparison to other Companies. The opposite party No. 2, thereafter, invested huge amount through the petitioners

but the petitioners without the consent of opposite party No. 2/complainant, did the business and charged arbitrary rate of brokerages and interest keeping the opposite party in dark for their own gain and put this opposite party in a heavy loss.

3. It appears from the record that the petitioners after their appearance filed a petition under Section 245 of the Code for their discharge, which was rejected by the order impugned holding that the witnesses examined before framing of charge, have fully supported the case and the present case is basically a document based case and those documents require no comment at this stage. Finding sufficiency of material for framing charge, the court concerned rejected the petition of the petitioners for their discharge as stated above.

4. During pendency of the revision petition, one interlocutory application bearing I.A. No. 2244 of 2015 was jointly filed by the learned counsel for petitioners and opposite party No. 2 stating therein that they have settled their dispute outside the Court and in terms of compromise, the petitioners handed over the cheque to opposite party No. 2. The counsels jointly prayed that as the parties have settled their dispute, the complaint case No. C/1-764 of 2008, which is pending in the Court of Judicial Magistrate, 1st Class, Jamshedpur, be set aside.

It was further submitted that there is no justification now to continue the proceeding and even though one or two sections are not compoundable in the light of Section 320 of the Code, this Court has every jurisdiction to accord permission for compounding the case notwithstanding the limitation of Section 320 of the Code.

5. Section 320 of the Code sets out the details of the offences in different Tables, which are compoundable by the parties and those, which are compound-able with the leave of the Court. Out of the provisions as mentioned above, which is reiterated herein again Sections 406/420/468/120-B of I.P.C. in which cognizance of offence has been taken, Sections 406, 420 and 506 of I.P.C. are compoundable with the permission of the Court. The question, thus, arises whether this Court would be competent to allow compounding notwithstanding the bar of Section 320 of the Code? In a judgment reported in B.S. Joshi and Others Vs. State of Haryana and Another, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 , the compounding was assented to by the Hon''ble Apex Court in a proceeding under Section 498-A which similarly was not compoundable under Section 320. The Hon''ble Apex Court further held that in the matrimonial cases, it becomes the duty of the court to encourage genuine settlement of matrimonial disputes. The Hon''ble Court further observed that in the given fact, the parties having arrived at settlement and having revived their relationship as husband and wife with such eventuality, there would be almost no chance of conviction as quite obviously in view of the compromise, no evidence would be forthcoming against the accused persons. It was thus noticed that

there would no reasonable likelihood of the accused being convicted of the offence.

6. In the present case, some of the provisions in which the cognizance has been taken are compoundable with the leave of the court. It is true that in view of Section 320 of the Code, the offence under Sections 420 and 406 of the Indian Penal Code are compoundable with the permission of the Court or by the persons, cheated or by the owner of the property in respect of which breach of trust has been committed. In the instant case, the charges against the petitioner have been framed under Sections 406, 420, 468, 506 and 120-B of I.P.C. Obviously, the main offences are Sections 406 and 420 I.P.C. and Section 120-B of I.P.C. deals with a conspiracy for committing a particular offence. Similarly, Section 468 of I.P.C. deals with punishment in a case where a person commits forgery intending that the document forged shall be used for the purpose of cheating. Since both the parties have jointly filed the compromise petition and settled their dispute and further prayed that they do not want to proceed with the case, the bar created under Section 320 of the Code, should not come in the way of compounding the offence and the compromise may be accepted. However, the compromise petition filed by both the counsels before this Court is only signed by the two counsels i.e. for the petitioners and opposite party No. 2 and it does not reflect that the same has been signed by the petitioners and the opposite party No. 2, which would be an essential requirement on the part of the parties to the complaint case to put their signatures on the joint compromise petition.

7. In that view of the matter, both the parties are directed to file a joint compromise petition in court below duly signed by all the parties of the complaint case. The Court below is directed to accord permission to withdraw the criminal prosecution lodged by the opposite party No. 2 against the petitioners after being satisfied with the genuineness of the compromise. With the aforesaid observations and directions, the revision application is allowed and the order impugned dated 4.2.2010 passed by Judicial Magistrate, 1st Class, Jamshedpur in Complaint Case No. C/1-764 of 2008 is, hereby, set aside.