

(2014) 08 CHH CK 0026
In the Chhattisgarh High Court
Case No : Criminal Revision No. 376 of 2014

Girdharilal Chaudhary

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(9), 397
Penal Code, 1860 (IPC) — Section 149, 24, 294, 307, 320
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2014) 4 CGLJ 561

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Roop Naik, counsel, Advocate for the Appellant; Raj Kumar Gupta, Deputy Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.

1. Feeling aggrieved and dissatisfied with the impugned order 12.05.2014 passed by Special Judge, Raigarh in Special Case No. 32/2011, the petitioners/accused, who are facing trial for the offences under Sections 294, 506-part II, 323/34 and 325/34 of the Indian Penal Code (henceforth "IPC") and Section 3(1)(x) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (henceforth "the Act, 1989"), have preferred this revision u/s 397 read with Section 401 of the Code of Criminal Procedure (henceforth "the Code") whereby their application under Sections 320(2) of the Code (henceforth "the Code") has been rejected in part.

2. The Core facts necessary for judging the correctness of the order states as under:-

(2.1) The two accused petitioners namely Girdharilal Chaudhary and Chhabilal

Chaudhary are facing prosecution for the aforesaid offences pursuant to the First Information Report (Ex. P-1) lodged by complainant/injured persons namely Laxman Chouhan and Mohan Chouhan.

2.2 On 8.5.2014, defence examined his witness namely D.R. Rathore as DW-2 and closed their case. The case was fixed for final hearing on 9.5.2014 and on that day it was adjourned for 12.5.2014. On 12.05.2014, present petitioners/accused persons and the complainant/injured persons namely Laxman Chouhan and Mohan Chouhan jointly filed their application u/s 320(2) of the Code for permission to compound the offences charged against accused persons stating that they have settled their dispute amicably outside the court without fear and pressure and, therefore, they be permitted to compound the offences and, thus, accused persons be acquitted of the charges for the aforesaid offences in exercise of power conferred u/s 320(2) of the Code.

2.3 The Special Judge (Atrocity), by its impugned order dated 12.5.2014, partly allowed the application filed u/s 320(2) IPC and permitted to compound the offences under Sections 294, 506-B, 323 IPC, however, partly rejected their application and held that offence u/s 3(1)(x) of the Act, 1989 is not compoundable u/s 320(2) of the Cr.P.C. with the permission of the Court; and permission to compound the offence u/s 325 read with Section 34 of the IPC also cannot be granted, considering the nature of injury and the manner in which, the offence is alleged to have been committed.

2.4 Against this order, the instant revision has been filed questioning the same as unsustainable in law.

3. Shri Roop Naik, learned counsel appearing on behalf of the petitioners would submit that the offence u/s 3(1)(x) of the Act, 1989 read with Section 325/24 of the Indian Penal Code are compoundable with the permission of the Court u/s 320(2) of the Code and, therefore, the learned Special Judge (Atrocity) has committed manifest illegality in partly rejecting the application and as such, the part of the order, by which the Special Judge has not permitted to compound the offences u/s 3(1)(x) of the Act, 1989 and 325/34 of IPC, deserves to be set aside.

4. Opposing the submission made by learned counsel appearing for the petitioners, Shri Raj Kumar Gupta, learned Deputy Advocate General for the State would submit that the offence u/s 3(1)(x) of the Act, 1989 is not compoundable in view of Section 320(9) of the Code read with Section 4 of the Code as there is no express provision much less enabling provision in the Act, 1989, making the offences under the said Act compoundable with the permission of the Court. He would further submit that so far as offence u/s 325/34 IPC is concerned, learned Special Judge is absolutely justified in not granting leave to compound the offence u/s 320/34 IPC considering the facts of the case and, as such, revision petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties and perused the record of court below including order impugned with utmost circumspection.

6. Upon hearing the learned counsel for the parties and on perusal of the record, the following two questions fall for consideration in the instant revision:

(1) Whether the offence u/s 3(1)(x) of the Act, 1989 is compoundable with the leave of the Court u/s 320(2) of the Code?

(2) Whether the Special Judge was justified in refusing leave to compound the offence u/s 325 read with Section 34 of the Indian Penal Code in the facts & circumstances of the case?

Answer to question No. 1.

7. Chapter XXIV of the Code includes Section 320 of the Code which provides compounding of offence, thus, compounding of an offence is statutorily provided u/s 320 of the Code.

8. A close and careful reading of Section 320 of the Code, it would appear that there are two categories of the offences under the provisions of Indian Penal Code which have been made compoundable; first category of the offence as provided u/s 320(1) of the Code, the leave of the court for compounding of offences is not required whereas offence as provided Section 320(2) of the Code, leave of the Court is required for compounding of offence. But in both the categories of offences, compounding of offence can take place at the instance of persons mentioned in the Third Column of the table. According to the 3rd column of the table, compounding can only be possible at the instance of the person who is either a complainant or who has been injured or is aggrieved.

9. Sub-sections (4)(a) and (4)(b) of Section 320 of the Code also reiterate the same principle that in case of compounding, the person competent to compound, must be represented in a manner known to law.

10. Sub-Section (9) of Section 320 which is relevant in this connection is set out below:

"No offence shall be compounded except as provided by this Section."

11. The aforesaid provision came up for consideration before the Supreme Court in case of Ram Lal and Another Vs. State of Jammu and Kashmir, , in which, their Lordships of Supreme Court has held that sub-Section (9) of Section 320 of the Code imposes a legislative ban on compounding except as provided in the Section.

12. This proposition of law has been reiterated and followed by their Lordships of Supreme Court in case of Surendra Nath Mohanty and Anr Vs. State of Orissa, and held that by virtue of legislative mandate contained in Section 320(9) of the Code, only offence which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code can not be compounded. Para 5 of the report states as under:-

"5. In our view, submission of the learned counsel for the respondent requires to

be accepted. For compounding of the offences punishable under the Indian Penal Code, complete scheme is provided u/s 320 of the Code of Criminal Procedure, 1973. Sub Section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column No. 3 of the said table. Further, sub-section (2) provides that, the offences mentioned in the table could be compounded by the victim with the permission of the Court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code could not be compounded."

13. The Supreme Court in case of Bankat and Another Vs. State of Maharashtra, reiterated and followed the principles laid down in case of Ram Lal and another (supra) & Surendra Nath Mohanty and another (supra) by holding that sub-Section (9) of Section 320 specifically provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 to Table 2 provided u/s 320 can be compounded and the rest of the offences punishable under IPC cannot be compounded.

14. The Supreme Court in case of Gian Singh Vs. State of Punjab and Another, has clearly held that compounding of offences by the Criminal Court has to be in accord with Section 320 of the Code and in no other manner. Para 51 of the Code states as under:-

"51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable u/s 34 or 149 IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the Court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional Court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Subsection (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner."

15. Very recently, the Supreme Court in case of Mukesh Kumar and Others Vs. State of Rajasthan, following the decision of Ram Lal (supra), their Lordships of Supreme Court has clearly reiterated that an offence can be compounded only if it is compoundable except as provided by Section 320 of the Cr.P.C.

16. Extremely recently, in Yogendra Yadav Vs. The State of Jharkhand, , their Lordships of the Supreme Court has held as under:-

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the Indian Penal Code which are non-compoundable. Needless to say that offences, which are non compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh Case Vs. State of Punjab).

17. The constitution Bench, which decided A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, , has clearly held that, Code of Criminal Procedure is parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations and in the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure.

18. Thus, it is well settled that for compounding the offences, the Criminal Court has to strictly follow the mandate of Section 320 of the Code and an offence can be compounded only if it is compoundable, duly provided by Section 320 of the Code.

19. What falls for consideration is as to what should be the position in respect of offence punishable under the Act, 1989?

20. Sub-section 1 of Section 4 of the Cr.P.C. provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure.

21. Sub Section 2 of Section 4 of the Cr.P.C. provided that all offences under any other law shall be investigated into, tried, and dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

22. Thus, sub-Section (1) of Section 4 deals with offences under the Indian Penal Code whereas subsection (2) of the Section 4 deals with offences under any other law which would obviously include offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the compounding of offence could be brought into the category of otherwise dealing with the offences as provided in sub-Section 2 of Section 4 of the Code.

23. Thus, under sub-Section (2) of Section 4 of the Code, compounding of offence under any other law or enactment other than Indian Penal Code should

be dealt with in the manner indicated in the said law or enactment, notwithstanding the embargo in sub-Section (9) of Section 320 of the Code.

24. A Brief survey of the provisions of the Act, 1989 would show that there is no express provision in Act of 1989 either permitting or prohibiting compounding of the offences under the Act, 1989.

25. Now the question is whether the offence under the Act of 1989 can be permitted to be compounded in absence of any express provision in the Act of 1989.

26. In *Biswabahan Das Vs. Gopen Chandra Hazarika and Others*, , their Lordships of Supreme Court has held that for composition of an offence an express provision of law is necessary; the following paragraph of the said report are relevant:-

"10. From the above it was sought to be argued that if the wrong done was of a very trivial nature the rendering of compensation was in the eye of the law sufficient to redress it and to put an end to the matter without any reflection on the character of the person charged with having done the wrong.

11. We are unable to accept the above reasoning, if a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence."

27. In *Gian Singh (supra)*, it has been held by the Supreme Court that offences punishable under the special statutes are not covered by Section 320 of the Code.

28. Thus, following the principles laid down by their Lordships of Supreme Court in the above referred case, this Court is of the considered opinion, that in absence of enabling provision in the Act of 1989 for composition/compounding of the offences, the offence u/s 3(1)(x) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 is not compoundable and the learned Special Judge has rightly held, offence u/s 3(1)(x) of the Act, 1989, is not compoundable with the permission of court u/s 320(2) of the Criminal Procedure Code, 1973, therefore, permission of compounding the offence u/s 3(1)(x) of the Act, 1989 has rightly been rejected by the learned Special Judge (Atrocity), thus, this question is answered accordingly.

Answer to Question No. 2

29. It is true that offence u/s 325/34 IPC is compoundable with the leave of the Court and it can be compounded by the person injured.

30. Section 320(2) of the Code provides as under:-

31. The offence u/s 325 IPC, which is compoundable with the permission of this Court, it is the duty of the Court to examine the nature of the offence and the evidence and to satisfy itself whether permission should be granted. If on the evidence available on record, the said Court finds that no permission should be granted, it is open for the said Court to refuse it, but if on the contrary, the said Court comes to the conclusion that it is a case where he should grant permission, he may do so.

32. In the instant case, it is pertinent to mention that petitioners are being tried for the offences under Sections 294, 506-part II, 323/34 and 325/34 of the Indian Penal Code and application under Sections 320(1) and 320(2) of the Code was filed at the stage when both the prosecution and defence had already closed their evidence and case was fixed for final arguments on 12.05.2004.

33. The learned Special Judge (Atrocity) considering the facts & circumstances of the case, allowed the application for compounding with respect to the offences punishable under Sections 294, 506 part II, 323 read with Section 34 of the Indian Penal Code, but declined to grant leave to compound the offence u/s 3(1)(x) of the Act, 1989 finding it is not compoundable even with the permission of the Court and further declined permission to compound the offences u/s 325 read with section 34 of the Indian Penal Code in view of the nature of injuries suffered by complainant injured-Laxman Chouhan & Mohan Chouhan and taking into account other relevant facts & circumstances. In the considered opinion of this Court, reasons assigned by the learned Special Judge in not granting leave to compound the offence u/s 325/34 IPC appear to be sufficient and valid. The discretion exercised by the Special Judge declining to grant permission to compound the said offences is based on the sound ground and further considering the fact that neither the complainants were made party in this revision nor complainants have moved any such revision questioning the impugned order, learned Special Judge is absolutely justified in rejecting the applicant filed by the petitioners.

34. In view of the foregoing discussion and following the ratio of law laid down by their Lordships of the Supreme Court in afore-noted decisions, it is held that the learned Special Judge (Atrocity) is absolutely justified in rejecting the application for leave to compound the offence u/s 325/34 of the Code u/s 320 of the Code; and further justified in rejecting the application u/s 320(2) of the Code for compounding the offence u/s 3(1)(x) of the Act, 1989 warranting no interference by this Court in exercise of its revisional jurisdiction u/s 397/401 of the Code of Criminal Procedure, 1973.

35. Concludingly, the instant criminal revision is held to be devoid of merit and required to be dismissed, which I direct accordingly.