

(1998) 07 DEL CK 0070

In the Delhi High Court

Case No : Criminal Misc. (M) No. 958 of 1998

Gurcharan Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (1998) 4 AD 803 : (1998) CriLJ 3780 : (1998) 4 Crimes 298 : (1998) 74 DLT 308 : (1998) 46 DRJ 388 : (1998) 3 RCR(Criminal) 832

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. I.U. Khan, Adv Mr. M.S. Bhutalia, for the Appellant;

Judgement

Dalveer Bhandari, J.

1. The petitioner has approached this Court with the prayer for quashing the FIR and investigation of the case No. 599/97 u/s 307/34 I.P.C. Brief facts necessary to dispose of this petition are recapitulated as under:

2. The petitioner hired a farm house of one Arjun Sayal, the Complainant for two days for holding a wedding reception of his son. It was agreed that the petitioner would pay a consolidated amount of Rs.2,50,000/- for holding the reception. The amount was inclusive of the food provided at the wedding reception on the 25th and 26th of November, 1997. The complainant who is respondent No. 2 in this petition admittedly received Rs.1,10,000/- in advance. The balance amount of Rs.1,40,000/- was to be paid after the wedding reception and according to their understanding. When the reception was about to finish, at that point of time around 2:00 a.m. the complainant demanded the balance amount from the petitioner. The petitioner did not like the complainant's demanding the amount because at that time he was enjoying the wedding reception with his friends. The petitioner nodded his head and mentioned that the balance amount will be paid after the reception. The complainant again demanded the amount after an hour

at 3:00 a.m., when practically the reception was over and only 4 to 5 persons were left. The petitioner got enraged and started abusing the complainant and said "I will pay your amount just now and the asked one person who was standing nearby to pay the amount. Incidentally, at that time the petitioner was holding a 12 bore gun in his hand. On repeated demands of the remaining outstanding amount, the petitioner got infuriated and to frighten the complainant, the petitioner fired a shot in the air and again he gave the impression as if he was loading the second cartridge to hit the complainant. The complainant felt that probably the petitioner was loading the same with a view to fire at the complainant. The complainant ran from the scene. However, the petitioner did not fire the second cartridge. The complainant mentioned in the report to the S.H.O. later on that he became nervous and frightened and consequently he could not assess the correct position and as a matter of fact due to some misunderstanding. The complainant reported the matter to the police so that no harm could be cause to him thereafter. However, on the complaint of the complainant, a case was registered and investigation was carried out. During the pendency of the investigation. In view of the settlement before the parties the complainant Arjun Sayal moved an application before the S.H.O. Vasant Kunj, New Delhi with the prayer that matter need not be investigated further and may be closed. The petitioner was granted anticipatory bail by the learned Additional Sessions Judge. The petitioner has now moved this court for quashing the FIR and other proceedings pending against him in view of the settlement and compromise between the parties.

3. Mr. I.U. Khan, the leaned counsel appeared for the petitioner and Mr. P.R. Thakur, the learned counsel appeared as amices curiae in this case to assist the court. The pivotal question which arose for the consideration of the Court is whether the Court can grant permission to compound the non-compoundable offences or quash the proceedings in view of the settlement? At this stage, I deem it appropriate to deal with some decided cases dealing with this proposition.

4. Their Lordships of the Supreme Court in the celebrated case reported as State of Karnataka Vs. L. Muniswamy and Others, observed that the High Court under its inherent powers can quash the proceedings if it comes to the conclusion that allowing proceedings to continue would be an abuse of the process of the Court or that ends the justice required that the proceedings ought to be quashed. In the said judgment, the Court observed that ends of justice are higher than ends of mere law. Though, justice has got to be administered according to the laws made by the legislatures. The Court observed in the said case that the Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court also observed that lame prosecution be quashed. The relevant portion which could have vital bearing in determining and adjudicating the controversy, is reproduced as under:

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue

would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

5. Their Lordships of the Supreme Court in similar circumstances have quashed the prosecution and have granted permission to compound the offence in *Y. Suresh Babu Vs. State of A.P. and Another*, . In this case, the appellant was convicted u/s 326 IPC in a non compoundable offence by the Sessions Court and his conviction was affirmed by the High Court. Aggrieved by the order of the High Court, the appellant moved the apex court. It is mentioned in the judgment that through the intervention of well wishers, the parties who are from the same locality have reconciled their differences to preserve amity and good relations. The learned counsel for the accused/appellant submitted that his client has a feeling of remorse. While taking an oral view of the facts and circumstances, the Court granted leave to the party to compound the offence and conviction was set aside.

6. In *Mahesh Chand and Another Vs. State of Rajasthan*; 1990 (3) Rec CR 332 and *Kailash and others Vs. State of Haryana*; 1992 (1) Rec C.R. 198, their Lordships of the Supreme Court have granted permission for compounding of the offence u/s 326 I.P.C.

7. In *Chiranji Lal Vs . State of Uttar Pradesh*, (1982) 3 SCC 371b their Lordships of the Supreme Court granted permission for compounding a non-compoundable offence. While granting the permission, the Court observed that the Complainants have appeared before the Court and have stated that they have compromised the matter and have received the compensation and no rancour is now left in their hearts against the appellant. In these circumstances, the Court allowed the application and sanctioned the compounding of offence.

8. In *Bharat Singh Vs . State of M.P. and Others* under similar circumstances, the Court granted permission to compound the offence. In this case also the accused paid the offence. In this case also the accused paid Rs.15,000/- and the Court observed that for the maintenance of good relationship between the parties, the petition for compromise should be allowed.

9. In *R.P. Kapur Vs. The State of Punjab*, , the Supreme Court had an occasion to

lay down some guidelines for the High Courts for exercising its inherent powers. The Court observed that it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. But this power can always be used for securing the ends of justice. The Supreme Court and the High Courts have been consistent in their approach that the High Courts have inherent powers to quash proceedings where allowing the proceedings to go on would be an abuse of process of law and/or where the ends of justice require the proceedings to be quashed. But as far as power of compounding a non-compoundable offence is concerned, there is conflict of opinion among the High Courts. The courts have examined this issue on various occasions and arrived at different findings.

10. The Division Bench of the Karnataka High Court in *State of Karnataka, etc. Vs. H.S. Revanasiddappa, etc.*; 1994 C L J 2928 also allowed the parties to compound the offence.

11. In order to provide assistance to the Court, Mr. Thakur, the learned amicus curiae has cited a large number of judgments of various courts. It would be appropriate to examine some of these judgments.

12. In AIR 1946 169 (Privy Council) , their Lordships of the Privy Council, has observed that:

"No court can claim inherent jurisdiction to exercise powers expressly taken away by legislation. Clause 26 of the Special Criminal Courts Ordinance, 1942 expressly takes away all powers of revision by the High Court and consequently the High Court does not possess inherent jurisdiction to interfere with the order of a Special Magistrate acting under that Ordinance. Moreover, a Special Magistrate is not a Court inferior to the High Court and indeed not a Court at all and Therefore, the High Court has no power of revision under Sections 435 and 439 of the Criminal Procedure Code."

13. In *Ganga Prasad Vs . State of U.P.*, (1987) 2 SCC 232 , the Court observed that provisions of Section 561(A) of the Code cannot be invoked for exercise of a power which is specifically prescribed by the Court.

14. In *Madhu Limaye Vs. The State of Maharashtra* , , their Lordships of the Supreme Court observed that there are two exceptions to the powers of the High Court u/s 482 of the Code of Criminal Procedure. These exceptions are reproduced as under:

"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redressing of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice."

15. In *Biswabahan Das Vs. Gopen Chandra Hazarika and Others*, it was held that :

"If a person is charged with an offence, however trivial it may be, 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."

17. In *Rameshchandra J. Thakkar Vs. Assandas Parmanand Jhaveri*, State of Maharashtra, their Lordships of the Supreme Court held as under:

"All the same it appears that the said permission was one indivisible permission for the offences u/s 420 Indian Penal Code and Section 13 of the Maharashtra Act. As no valid permission could be granted for the compounding of an offence u/s 13 of the Maharashtra Act, the permission would have to be held to be invalid in its entirety. It is not permissible in such an event to sever the permission into two parts and to uphold it so far as the offence u/s 420 Indian Penal Code is concerned and hold it to be invalid in respect of the offence u/s 13 of the Maharashtra Act."

18. In *London and Lancashire Insurance Co. Ltd. Vs. Binoy Krishna Mitra*, ; the Division Bench of the Calcutta High Court held as under:

"According to the definition of the word "illegal" in Section 43, Penal Code, compounding an offence other than those made compoundable by Section 345, Criminal Procedure Code, will be illegal as such compounding is a thing prohibited by Section 345(7), Criminal Procedure Code. Hence, an agreement to compound a non-compoundable offence is thus forbidden by law in India, and when such an agreement will constitute the consideration for or be the object of an agreement the latter will fail to develop into a contract. But where the consideration for the transaction of a pro-note with an equitable mortgage is the promise's undertaking not to sue the promisor in damages for tort or for money had and received in quasi contract it is perfectly lawful consideration. The object of the agreement is not the stifling of the prosecution. No infirmity Therefore, attaches to the contract."

19. The Orissa High Court in *Sanatna Ram and Others Vs. State and Others* 1991 Criminal Law Journal 758 observed "that in special cases, the Supreme Court may have the powers to direct compounding of non-compoundable offence. The High Court has no such power and accordingly, I am not inclined to exercise inherent powers u/s 482 Criminal Procedure Code which would be contrary to the legislative intent".

20. Similar view was taken by the Division Bench of Karnataka High Court in *State of Karnataka, etc. Vs. H.S. Revanasiddappa, etc.*; 1994 C L J 2928. In this case the Court observed that:

"Under Article 142 of the Constitution of India, the Supreme Court has got the

power to pass such decree or to make such orders as is necessary for doing complete justice in any cause or matter pending before it and the Supreme Court has observed in the decision reported in *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.*, about its plenary jurisdiction under this article to do complete justice as hereunder:

"It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142 of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Article 142 is unsound and erroneous. In both *Garg's* as well as *Antulay's* case the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with *Shri Nariman* that the power of the Court under Article 142 in so far as quashing of criminal proceedings are concerned is not exhausted by Sections 320 or 321 or 482. The power under Article 142 is at an entirely different level and of a limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the Court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy."

"It will again be wholly incorrect to say that powers under Article 142 are subject to such statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause of matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public-policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

"There is some justification to say that statutory prohibition against compounding of certain class of serious offences, in which larger social interests and social security are involved, is based on broader and fundamental considerations of public policy. But all statutory prohibitions need not necessarily partake of this quality. The attack on the power of the apex Court to quash the crucial proceedings under Article 142 (1) is ill-conceived. But the justification for its exercise is another matter."

21. This would make it abundantly clear that the power of the Supreme Court under Article 142 is not restricted by Section 320, 321 or 482 of the code or all of them put together. It is also clear that the power under this article is not subject to any statutory prohibition and in particular sub-section (9) of Section 320 of the Code so far as we are concerned. Therefore, should be held that the decision given in Mahesh Chand's case 1989 C L J 121 by the Supreme Court rested on the Plenary jurisdiction it had under Article 142 of the Constitution and it cannot be taken as an authority for the proposition that the Subordinate Criminal Court have the jurisdiction to grant permission to compound a non-compoundable offence in appropriate cases.

22. In 1948, Delhi and Punjab High Courts have taken the view that in the exercise of inherent powers, the Courts can compound a non-compoundable offence. In Arvind Bhushan Chugh and Others Vs. Promilla @ Ritu and Another, the Court observed as under:

"...but this is after the quashing of the present criminal proceedings, After receiving this amount respondent No. 1 wants to withdraw her complaint and does not want to wash her dirty linen in public. The law is meant to do justice and not to force the parties for a protracted litigation. This Court has inherent power to compound a non-compoundable offence when the interest of justice so requires."

23. In another case, Vinod Kumar Vs. State : 4 (1993) CCR 2590; Anil Dev Singh, J. of the Delhi High Court has also taken the view that the High Court has the power to compound a non-compoundable offence.

24. In K.L. Sethi Vs. Delhi Transport Corporation and Another, Santosh Duggal, J. of the Delhi High Court has taken the view that High Court has the power to compound the offence u/s 482 of the Code of Criminal Procedure.

25. Vijender Jain, J. of the Delhi High Court in R.S. Arora Vs. State; 1995 JCC 439 has also taken the view that the High Court has the power to compound even the non-compoundable offences. The Court observed that this power should be exercised sparingly. The relevant portion of the judgment is reproduced.

"It is true that offences which are non-compoundable in relation to the quashing of such offences, the High Court has to act with great caution and circumspection but to agree with the arguments of learned counsel for the State that those offences which are non-compoundable in view of the Section 320 of the Cr.P.C., the High Court will be without power although parties have settled their matter amicably would be to make the provisions of Section 482 of the Cr.P.C. nugatory and ineffective. The Parliament has specifically provided Section 482 in the Cr.P.C. and High Court in exercise of these powers which are plenary are neither fettered by any provision of the Code and certainly not by Section 320 of the Cr.P.C. So long as these powers are exercised by the High Court to secure the ends of justice and to stop abuse of the process of the Court. Compromise in modern society is a sine qua non of harmony and orderly behaviour. Compromise

is the soul of justice. Exercising the inherent powers. u/s 482 of the Cr.P.C. in disputes which emanates out of matrimonial differences, landlord-tenant matters or commercial transactions are to advance the course of justice. No useful purpose will be served after the parties have amicably settled their disputes, buried their past, want to live in a spirit of peace and harmony to relegate them before the police and the Courts, that will be sheer abuse of the process of Court and instead of securing justice would amount to perpetuating injustice to such parties, who have compromised their matters."

26. The Punjab and Haryana High Court has also taken a view that the Courts have the power to compound the non-compoundable offences. In *Saud & Another Vs. The State of Haryana*; 1998 (1) C C C 388, the same view has been taken by the learned Single Judge of that Court. In this case there was a compromise between the parties for the offence u/s 307 IPC. The crime was committed in the year 1988 and the appellants have suffered agony and criminal trial for a long time. Permission to compound the case was granted on the strength of the Supreme Court decision in the case of *Y. Suresh Babu, Mahesh Chand and Kailash and Others* (supra).

27. After a careful scrutiny and analysis of the various judgments mentioned above, the legal position seems to be quite clear that a High Court u/s 482 of the Cr.P.C. can quash the proceedings where there is an abuse of process of the Court or the ends of justice so requires.

28. There seems to be conflict of opinion, as far as inherent powers of the High Court in the matter of exercise of its jurisdiction for compounding a non-compoundable offence is concerned. This High Court has consistently taken the view that Court has inherent powers to compound a non-compoundable offence.

29. In the instant case, the only prayer is for quashing the proceedings, Therefore, the question of compounding of non-compoundable offences need not be determined in this case.

30. In view of the totality of the facts and circumstances of this case and law declared by the apex court and other courts for securing the ends of justice, I deem it appropriate in the interest of justice to quash the FIR No. 599/97 u/s 307/34 IPC Police Station Vasant Kunj, New Delhi and proceedings arising there from.

31. Before parting with this case, I would like to place on record my deep sense of appreciation for the very able assistance provided by Mr. P.R. Thakur, learned amicus curiae in this case and Mr. I.U. Khan, counsel for the petitioner. The petition is accordingly disposed of.