

**(1991) 10 MAD CK 0066**

**In the Madras High Court**

**Case No :** Criminal Original Petition No. 8137 of 1991

Krishnan

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 22-10-1991

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482  
Penal Code, 1860 (IPC) — Section 307

**Citation :** (1991) LW(Cri) 590

**Hon'ble Judges :** Pratap Singh, J

**Bench :** Single Bench

## Judgement

Pratap Singh, J.—This petition coming on for hearing on Tuesday the Eight day of October, 1991 upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. V. Gopinath, Advocate for the Petitioner and of Mr. G. Kumaravel, Govt. Advocate (Crl. side) on behalf of the Respondent (State) the Court made the following Order:

The caused in S.C. 36 of 1991 on the file of Assistant Sessions Judge, Tirupattur, has filed this petition u/s 482 Code of Criminal Procedure, praying to set aside the order passed by the Assistant Sessions Judge, Tirupattur in C.M.P. 7 of 1991 in S.C. 36/91.

**2. Brief facts are:**

The Petitioner and the complaint in the case are husband and wife. On her complaint, the Respondent Police had registered the case, investigated the same and has laid charge sheet against the Petitioner for offence u/s 307 Indian Penal Code. It was part heard. While so, petition for compounding the offence was filed by the Petitioner and his wife who was the complaint and who figured as P.W.1. The learned Assistant Sessions Judge has dismissed the petition on the ground that the petition for compounding the charge u/s 307 Indian Penal Code is not maintainable. Aggrieved by the same, the accused in the court below has filed this petition.

3. Mr. V. Gopinath the learned Counsel appearing for the Petitioner, would contend that in as much as the Petitioner is the husband and complainant is the wife and they have got children and the matter was settled between the spouses on the intervention of the well-wishers, and the Petitioner may be permitted to compound the offence. He would further state that though the charge was for offence u/s 307 Indian Penal Code which is not an offence compoundable u/s 320 Code of Criminal Procedure, but as a special case, by virtue of the extraordinary powers of this Court u/s 482 Code of Criminal Procedure, permission may be granted for compounding the offence.

4. The Petitioner viz., the accused and the complainant are husband and wife. They have got four children. It is said that at the intervention of the elders in the village, they have settled the matter and hence permission is sought for. Section 307 Indian Penal Code, is not one of the offence which can be compounded u/s 320 Indian Penal Code. However, in appropriate cases, direction can be given for permission to compound the case. In Mahesh Chand and Another v. State of Rajasthan 1990 L.W. (Crl.) 3 , the apex Court gave permission to compound the offence u/s 307 Indian Penal Code. In that case, the trial Court acquitted the accused. But they were convicted by the High Court for offence u/s 307 Indian Penal Code. One of the accused is a lawyer. There a counter case arising out of the same transaction. That case was already compromised. After examining the nature of the case and circumstances under which the offence was committed, the apex court has held that the trial court shall permit them to compound the offence and a direction was given. At this stage itself, I wish to point out that it is not only in case where there is a counter case, such permission should be accorded. Such is not the purport of this ruling. But unfortunately, the court below seems to have thought that only because there was a counter case, the apex Court had permitted compounding of the offence. The Court below after referring to the above ruling has stated as follows:

The facts of the said decision are not applicable to the present case, because, in the said case, the Lawyer was an accused and counter case was already compromised for the offence u/s 307, I.P.C. and the petition for compounding the offence was allowed by the Supreme court in peculiar circumstances.

The rationale of this ruling is that after examining the case and circumstances under which the offence was committed, in appropriate cases such permission is accorded, to compound the offence. It so happened in that case, that there was a counter case and the accused was a lawyer and the counter case was compromised. Those are circumstances available in that case. It is not as if only in such cases where exactly similar circumstances are available, permission can be granted.

5. In Thathapadi Venkatalakshmi Vs. State of Andhra Pradesh and Another , on the complaint of the wife, case was registered, investigation was done and charge-sheet was laid for offence u/s 498-A, Indian Penal Code against the husband. Permission to withdraw the case filed u/s 408-A Indian Penal Code by

the wife against her husband was sought for. That was refused. The matter was taken up to the High Court. Andhra Pradesh High Court has pointed out that it is the charge sheet filed by the police which formed basis for court to take cognizance of offence and therefore the wife cannot be permitted to withdraw charge sheet filed by police and the order refusing per-mission is correct. But yet since the parties had reconciled and there was agreement between the spouses to load the hormone us matrimonial life, the High Court has directed the trial Court to accord permission to compound the offence after examining the parties in Court, in view of the larger interest of the parties and to secure ends of justice.

6. In the instant case, as I have already indicated, the wife was the complainant and the husband is the accused. They have settled the matter at the intervention of well-meaning elders. They have got four children. In the circumstances, it is a fit case for giving permission for compounding the case. In view of the above the order in CMP. 7 of 1991 is set aside and I direct the trial Judge, to accord permission to compound the offence, after being satisfied with the compromise agreed upon. This petition is ordered as above.