

(2014) 10 AP CK 0070

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 9567 of 2014

Nallajerla Murali Krishna

APPELLANT

Vs

The State of Telangana

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Constitution of India, 1950 — Article 20, 245, 245, 246, 246
Criminal Law (Amendment) Act, 2013 — Section 24(c)
Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 209, 320, 320(2)
Penal Code, 1860 (IPC) — Section 354, 354A

Citation : (2015) 2 ALD(Cri) 428

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : B. Vijaysen Reddy, Advocate for the Appellant

Judgement

B. Siva Sankara Rao, J.—This matter involves to decide whether Section 354 IPC (after Criminal Law Amendment Act, 13 of 2013 which came into force) with effect from 03.02.2013 with consequential amendment in the Schedule-I Cr.P.C. is still a non-compoundable offence and triable by Court of Sessions and whether the parties are entitled to the benefit to the compounding of crimes occurred the time prior to the amendment came into force, from any conflict without reconcilability between the earlier A.P. State Amendment made with assent of President and the subsequent Central Legislation (supra) with reference to Articles 246(2), 251 and 254 of the Constitution of India. This criminal petition is filed under Section 482 Cr.P.C. by the petitioner-accused, seeking a direction to the learned Special Sessions Judge for cases under Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act-cum-Additional District and Sessions Judge, Khammam to permit him to compound the offence in Criminal Appeal No. 94 of 2013.

2. The petitioner is the accused and the 2nd respondent is the de facto complainant. The Crime No. 30 of 2012 was registered for the offence punishable under Section 354 IPC against him on the report of the victims father. The police

after investigation filed charge sheet and the same was taken cognizance under Section 190 Cr.P.C. by the learned Committal Magistrate, by allotting P.R.C. No. 16 of 2012 and after compliance with the provisions of Section 209 Cr.P.C. committed to the Court of Sessions and the learned Sessions Judge taken cognizance under Section 193 Cr.P.C. and allotted S.C. No. 74 of 2013. After completion of the trial, the learned Assistant Sessions Judge, Khammam, vide judgment, dated 22.07.2013, convicted the accused for the offence under Section 354 IPC, sentencing to undergo rigorous imprisonment for two years and to pay fine of Rs. 500/-. Aggrieved by the same, the petitioner preferred CrI. A. No. 94 of 2013, which is pending on the file of the Additional District and Sessions Judge-cum-Special Judge for Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act Offences, Khammam. It appears that the petitioner and the de facto complainant entered into compromise and filed two applications under Section 320 Cr.P.C. before the learned Additional Sessions Judge-cum-Appellate Court to accord permission to compound the offence. These two applications on the even date i.e., on 11.06.2014 were returned, with an observation that the offence under Section 354 IPC is non-compoundable (as per the A.P. (Amendment) Acts, 6 of 1991 and 3 of 1992). It is impugning the same and by seeking permission to compound the present petition is filed.

3. No doubt, Section 354 IPC originally as it stands is provided with punishment up to two years or with fine. From the subjects under the concurrent list the A.P. State brought Amendments as per the Seventh Schedule List III, Items 1 and 2 read with Article 246(2) of the Constitution with assent of the Hon'ble President of India viz., (I) by the Act 6 of 1991 to Section 354 IPC with effect from 01.04.1991 by enhancing the sentence for a term not exceeding five years, but which may extend to seven years and shall also be liable to pay fine, and but for adequate reasons to mention in the judgment to impose a sentence of imprisonment of either description for a term which may be less than five years but which shall not be less than two years and (II) also in the Schedule-I Cr.P.C. by the Amendment Act 3 of 1992 with effect from 15.12.1992 making the amended Section 354 IPC as a cognizable offence, non-bailable offence and as triable by the Court of Sessions besides non-compoundable under Section 320 Cr.P.C., if any.

4. Section 354 IPC originally including under Schedule-I of the Cr.P.C. cognizable and even bailable that was triable by any Magistrate and also compoundable under Section 320 Cr.P.C. In fact, after the State Amendments (supra), there is the Central Legislation (referred supra) covered by Criminal Law (Amendment) Act 2013 (Act 13 of 2013), which came into force with effect from 03.02.2013, with punishment not less than one year but which may extend to five years and shall also be liable to pay fine; by deleting the original words shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. The Central Amendment by Act 13 of 2013, includes incorporation of Sections 354A to D in IPC. It is pursuant to it, in the Cr.P.C. also by the Criminal Law (Amendment) Act 2013, as per Section 24(c) there was

amendment to the Schedule-I of Cr.P.C. by making the offence non-bailable and triable by any Magistrate.

5. For more clarity the relevant portion (with Amendments State and Central) in Schedule I of Cr.P.C. (classification of offences under IPC) is shown in the table herein.

Section

Punishment

Cognizable

or non cognizable

Bailable

or non bailable

By what

court

triable

(1)

(2)

(3)

(4)

(5)

(6)

Original

354- Assault

or use of

criminal

force to

a

woman

with

intent to

outrage

her

modesty
Upto 2
years or fine
or both
Cognizable
Bailable
Triable by
any
Magistrate
A.P.
Statement
Amendment
-do-
Upto 7
years, not
less than 5
years and
for special
reasons not
less than 2
years and
fine
-do-
Non bailable
Court of
Sessions
Central
Amendment
by Act 13
of 2013

-do-

Upto 5

years and

not less than

1 year and

with fine

-do-

Non bailable

Any

Magistrate

From the above, the Schedule-I as originally was, of cognizable, bailable and triable by any Magistrate. The Central Amendment by Act 13 of 2013 in the Schedule is by altering bailable as non-bailable and retained in the other aspects but for enhanced the sentence of imprisonment and also with fine. It is to say the change is in column Nos. 3 and 5 of the Schedule as supra. If compared to A.P. Amendment by later Central Amendment supra, the change is in Column Nos. 3 and 6 and at par in Column No. 5; as Column Nos. 1, 2 and 4 are common in original, A.P. State Amendment and later Central Amendment out of the six columns supra.

6. It is important here to note from the above, prior to the Andhra Pradesh Amendment Act, under the Central legislation the offence under Section 354 IPC is bailable, cognizable and triable by any Magistrate with punishment up to maximum two years and after the A.P. State Amendment, it is not less than two years even after special reasons and otherwise not less than five years, which may extend to seven years as stated supra and after the Central Amendment Act with effect from 03.02.2013, it is not less than one year which may extend to five years and also with fine and so far as first Schedule of Cr.P.C. pursuant to the amendments concerned, though the State Amendment supra speaks triable by Court of Sessions and non-bailable so far as subsequent Central Legislation, which came into force with effect from 03.02.2013 concerned, the original words triable by Court of Magistrate retained as it is, though in other respects it is made non-bailable at par with A.P. Amendment, by enhancing sentence from what is provided by original session and though lesser to what is provided by the A.P. Amendment. It is to say there is a conflict between the State Legislation that received the assent of the President and the subsequent Central Legislation as to the case is triable by the Court of Sessions or triable by Magistrate.

7. In fact, Article 254 of the Constitution of India speaks on what law to prevail in case of inconsistency between the laws made by Parliament and laws made by Legislatures of the States. It says (1) If any provision of a law made by the

legislature of a State is repugnant to any provisions of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State;

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter in including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. Article 246(2) speaks that notwithstanding anything in clause (3) (State list), Parliament, and, subject to clause (1) (Union list) the legislature of any State also, have power to make laws with respect to any of the matters enumerated in the List-III (Concurrent list) in the Seventh Schedule. Article 251 speaks as to what law prevails where there is inconsistency between laws made by Parliament under Articles 249 and 250 (power of Parliament to legislate to a matter in the State list in the national interest and or during proclamation of emergency in operation), and laws made by the legislatures of States as follows:

Nothing in Articles 249 and 250 shall restrict the power of the legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either or the said articles power to make, the law made by Parliament, whether passed before or after the law made by the legislature of the State, shall prevail, and the law made by the legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

8. From combined reading of clauses 1 and 2 along with the proviso of Article 254 together with Articles 246(2) and 251 of the Constitution of India, it is crystal clear that in the Concurrent list even the law made by the State Legislature which received the assent of the President as a subsequent Legislature to the Central Legislation should prevail as per the proviso of the Article 254; any subsequent legislation made by Parliament later again shall prevail even to the earlier State Legislation received the assent of the President. It is to say in case of any repugnancy with irreconcilable earlier State Legislation with the assent of the President and subsequent Central Legislation under the concurrent list as per the above Article for the Central Legislation shall prevail. On the above scope of Articles 254 read with 251 and 246(2) of the Constitution

of India (under Part 11 Chapter-I Articles 245 to 255), it was well considered and laid down in catena of expressions by the Apex Court, viz., *Zaverbhai Amaldas vs. State of Bombay*, *Tika Ramji vs. State of U.P.*, *Karunanidhi vs. Union of India*, *Deepchand vs. State of U.P.*, *State of Assam vs. Horizon Union, Municipal Corporation vs. Siva Sanker*, *Bar Council vs. State of U.P.*, *Barai vs. Henry Ah Hoe*, *Raghubir vs. State of Haryana*, *Western Coalfields Limited vs. Special Area Development Authority*, *Gowri Shanker Vs. State of U.P.* *Lingappa vs. State of Maharashtra*, *Central Bank of India vs. State of Kerala*, *Zameer ALR Shaik vs. State of Maharashtra*, *Manoj Yadav vs. Pushpa, K.T. Plantation Pvt. Ltd. and another vs. State of Karnataka*, leave about the other expressions with reference to Article 245 clause (2), Article 251 and Article 254 where it was held that even prevails from assent of the President the subsequent State Legislation over earlier Central legislation; when under Article 254 clause (2) with reference to Article 254 clause (1) if one reads that Article 246 clause (2) and Article 251 of the Constitution of India, from the proviso, as the Parliament may at any time make a law into the matter by adding to or amending or varying or repealing the law, so made by the Legislature of the State, the later Central Legislation as per the proviso shall prevail over the earlier State Legislation received the assent of the President to determine the repugnancy are stated as follows:

1. It must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.
2. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
4. Where there is no inconsistency but a statute occupying the same field seeks to create a distant and separate offences, no question of repugnancy arises and both shall continue to operate in the same field.

The expressions clarified further that in particular from *Barai* (supra) in dealing with West Bengal Amendment to the Food Adulteration Act with imprisonment upto life and as triable by Court of Sessions and later Parliament amended the earlier Central legislation by grading the offences with different kinds of sentences all below life and as triable by Magistrate that was upheld as prevailing by the Bench of the Calcutta High Court referring to Article 254 holding earlier State Amendment is impliedly repealed by later Central Amendment that shall prevail. The Apex Court confirmed said conclusion.

9. Having regard to the above, the law is crystal clear that in case of any repugnancy with express or implied irreconcilability between the State Legislation received the assent of the President and the subsequent Central Legislation, only the Central Legislation which is subsequent to the State Legislation received

assent of the President, that shall prevail with implied repeal of such State Legislation.

10. Now coming to the scope of prospective or retrospective operation of any legislation with reference to the Article 20 of the Constitution of India more particularly from clause (1) is that, no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of offence. In fact the severe punishment is provided in the State Legislation that is applicable for the offences committed prior to the Central Legislation covered by the Amended Act of 2013, which came into force with effect from 03.02.2013. However, the expressions of the Apex Court say Article 20 of the Constitution of India is a protection to the accused of a crime from commission of the alleged offence till end of trial and during pendency of the lis. Any beneficial legislation can be extended to the accused. Conviction and sentence of accused in a criminal proceedings under the ex post facto law is prohibited as the sentence that to be imposable is for the act done and on the date of commission of offence but sentence imposable is on completion of trial. This constitutional guarantee applicable is thus only in respect of the substitute law for conviction and sentence and it does not extend to mere procedural law and change in the rules of evidence and the like, since there is no guarantee that the parties have a right to be tried by a particular Court or under a particular procedural law. However, it is not unconstitutional where the law provides for a minimum penalty than, which would have been inflicted under the law at the time when the offence was committed, by taking into consideration of the subsequent legislation to benefit the accused, the Court can impose the lesser sentence provided by the subsequent legislation which came into force after commission of the offence. The expressions in this regard of the Apex Court are Rattanlal vs. State of Punjab and the subsequent expression in T. Barai Vs. Henry Ah Hoe referred supra among others including Satwant Singh vs. State and Sajan Singh vs. State.

11. Having regard to the above, once the beneficial legislation is applicable to the accused from the Criminal Law Amendment Act, the offence is compoundable under Section 320(2) Cr.P.C. by virtue of the original and subsequent Central Legislations even any inconsistency with the existing State Amendment received the assent of the President will not prevail over the subsequent Central Legislation. Therefore, the appellate court should have been considered for compounding of the offence rather than return. Accordingly, Point No. 1 is answered.

POINT No. 2:

12. In the result, the Criminal Petition is disposed of by directing the learned Sessions Judge where the appeal is pending, to entertain fresh application for granting or according permission to compound and from presence of the accused as well as the de facto complainant and the victim a minor since representing by

her father de facto complainant to compound the offence. Miscellaneous Petitions, if any, stand closed.