
(2010) 04 MP CK 0049
In the Madhya Pradesh High Court

Pintu @ Abhishek and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 294, 307, 320, 323, 326

Citation : (2011) 2 MPJR 164

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.R. Waghmare, J.

By this application filed u/s 482 of the Cr.P.C. the accused/applicants Pintu, Anwar and Santosh, have challenged the order dated 26.02.2010 passed by JMFC, Indore in Private Complaint No. 1488/08 for offence under Sections 307, 294, 323 and 326/34 of the IPC and its refusal to drop the proceedings regarding the complaint. The present case was filed on a private complaint by non-applicant No. 2 Sunil Singh and therefore could not be compounded, according to the learned Judge of the lower Court, since the offence u/s 307 of the IPC was not compoundable and proceedings for trial had already commenced.

Counsel has stated that both the applicants and the complainant had entered into a compromise and had requested the learned Judge of the Court below for withdrawal of the complaint. However, the learned Judge had refused the same, hence, the present application.

Counsel has stated that a fresh written compromise along with an affidavit of the complainant Sunil Singh stating that he does not wish to pursue the complaint further has been filed as per directions by this Court on 10.04.10. Besides this; the complainant has also filed copies of several judgments of the Apex Court as well as other High Courts to indicate that if there is no reason to allow the trial to

continue and there is hardly any perceivable chance of the complainant for supporting the prosecution case then the order impugned needed to be set aside under the inherent power of the High Court u/s 482 of the Cr.P.C. Both the applicant as well as complainant have stated that they do not wish to continue the proceedings in the trial since both the parties had patched their differences.

Counsel for the applicants has also relied on *Badrilal v. State of M.P.* 2005 (7) SCC 55, whereby the Apex Court had while considering the joint petition of compromise u/s 320 of the IPC in a criminal appeal pertaining to non-compoundable offence u/s 307 of the IPC held that compromise cannot be recorded in such a case. But, while awarding sentence the effect of compromise can be taken into consideration and had on facts of the case, reduced the sentence of imprisonment to the period already undergone.

Counsel stated that the present case was on a better footing, since the complaint was pending before the JMFC, there was no trial and its consequent conviction and according to his own affidavit he stated that he had not paid the process regarding the order which directed for issuance of process and non-bailable warrants against the accused applicants for offence u/s 307 of the IPC.

Moreover, Counsel has also urged that the non-applicant No. 3 Akil had filed an FIR in Criminal Case No. 154/07 and three other cases by three other non-applicants regarding the same incident and same offence, in which the trial Court had acquitted the accused after granting them benefit of doubt. But since the present matter was being proceeded due to the private complaint filed by respondent No. 2 complainant Sunil Singh, the Judicial Magistrate, First Class had refused to compound the matter. Counsel prayed that the impugned order be set aside and proceedings be quashed in the interest of justice.

On considering the above submissions, I find that although the act of anguish of the accused resulted in the commission of the act of assault and which even appeared to police to be an act of attempt to murder, however, due to passage of time, there is good sense prevailing upon the accused as well as the complainant and the matter has been compromised. The compromise as well as the affidavit had been filed before the learned Sessions Court (annex. A,B, C to this application) and in the other cases the learned Judge had acquitted the accused.

That apart from the validity of such order of acquittal considering the case of *State of Karnataka Vs. L. Muniswamy and Others*, , I find that the Apex Court had laid down that in exercise of power u/s 482 Cr.P.C. the High Court is entitled to quash proceedings if it comes to conclusion that allowing the proceedings to continue would be an abuse of process of Court or that the ends of justice required that the proceedings ought to be quashed.

I also find from *B.S. Joshi and Others Vs. State of Haryana and Another*, , whereby the Apex Court has held that there is no general proposition limiting power of quashing the criminal proceedings of FIR or complaint as vested in Section 482 of the Cr.P.C. and although I agree that the matter could be depend

upon the facts and circumstances of each case whether to exercise such a power or not to secure the ends of justice, quashing of the proceedings of the trial becomes expedient in the present case. And since under the circumstances that the compounding has taken place and although the learned Judge below was well within his jurisdiction in rejecting the prayer for compounding u/s 320 of the Cr.P.C. the order needs to be quashed alongwith the proceedings consequent.

Similarly, in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Apex Court had held that the parameters, principles are guidelines for quashing of complaints, First Information Report and criminal proceedings have been settled in terms thereof the Court has observed the inherent powers u/s 482 of the Cr.P.C. such powers could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised and such powers would depend on facts of each case; I am satisfied that in the instant case, the accused/applicants are barely 27 to 32 years of age and working in the fruit market as employees, whereas the complainant Dr. Sunil s/o Manoharsingh is a practicing Advocate by profession and he has filed the compromise and an affidavit in support after having good knowledge of law, knowing the consequences and mainly no more cavil remains.

After considering all the facts and circumstances of the case, there is no need to vacillate more on the issue, the sole question that arises for adjudication is that since under the circumstances that the compounding has taken place and although the learned Judge below was well within his jurisdiction in rejecting the prayer for compounding u/s 320 of the Cr.P.C. then whether the order needs to be quashed alongwith the proceedings consequent. I find that conviction and sentence for offence u/s 307 of the IPC declared to be non-compoundable cannot be compounded at all even with the permission of the Court that is the law. The offence, which can be compounded are mentioned in Section 320 of the Cr.P.C. Those offences which are not mentioned therein cannot be permitted to be compounded.

However, in the matter of Surendra Nath Mohanty and Anr Vs. State of Orissa, the High Court had altered the conviction of the appellants from 307 to offence u/s 326 of the IPC and reduced the sentence to six months, the application for compounding was, however, dismissed by the High Court.

In the present case besides compounding of the offence the applicants have come before this Court u/s 482 of the Cr.P.C. for quashment of the proceedings before the JMFC, Indore and withdrawal of the private complaint also and in the exercise of wholesome power, I find that this Court is entitled to quash the proceedings. Sometimes compelling necessity for realization of the proper object of the provisions makes it expedient so to do in the interest of justice to quash the criminal prosecution. The other crucial aspect that cannot be marginalised is

the fact that it is warrant trial and only process has been issued.

In view of the above discussion and in exercise of the inherent power u/s 482 of the Cr.P.C., I find that it is a fit case under the circumstances to quash the impugned order as well as the private complaint filed by non-applicant No. 2. As a result it is directed that the impugned order dated 26.02.2010 passed by JMFC, Indore in Private Complaint No. 1488/08 is quashed and set aside. The application filed by the parties is allowed. Their bail bonds are hereby discharged.