

(2001) 08 DEL CK 0105

In the Delhi High Court

Case No : Criminal M. (M) 1664 of 2001

Rajeshwar Nath Bhargava and others

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 482
Penal Code, 1860 (IPC) — Section 120

Citation : (2001) 94 DLT 82

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. A.K. Vali and Sh. L.R. Luthra, for the Appellant; Sh. M.N. Dudeja and Sh. Ajay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—In this petition filed u/s 482 Cr.P.C. the petitioners seek quashment of FIR No. 190/90 and the criminal proceedings emanating there from pending before a Metropolitan Magistrate.

2. Short submission advanced by Sh.A.K.Vali for petitioners was that criminal case is pending for more than 11 years; complainant/respondent No.3 has compromised the matter with petitioners and Therefore, no fruitful purpose would be served by keeping the case alive. In support of the submission, reliance was placed on a decision in Sh. Mahavir Prashad Gupta and another vs. State of National Capital Territory of Delhi and others, 2000(2) JCC (SC) 785. It is not in dispute that petitioners stand charged u/s 120-B, section 419 read with section 120-B, section 420 read with section 120-B, section 468 read with section 120-B IPC on 30 the January 1997 and some of these offences are not compoundable u/s 320 Cr.P.C. and are serious in nature. The question of compound ability of non-compoundable offences came to be considered by the Supreme Court in the decision in Ram Lal and Another Vs. State of Jammu and Kashmir, and in paras 3 and 4 it was held:-

"3. Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the person indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:-

"(9) No offence shall be compounded except as provided by this section."

4. It is apparent that when the decision in Mahesh Chand (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges who rendered the decision in Y.Suresh Babu (supra) drawn. Hence, those were decisions rendered per incuriam. We hold that an offence which law declares to be which law declares to be non-compoundable even with the permission of the court cannot be compounded at all. The offence u/s 326 IPC is admittedly, non compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

3. Said judgment was quoted with approval by a three Judges Bench in the decision in Surendra Nath Mohanty and Anr Vs. State of Orissa, .

4. It may be noticed that in the decision in Madhu Limaye Vs. The State of Maharashtra, it was held that inherent power u/s 482 Cr. P.C. should not be exercised as against the express bar of law engrafted in any provision of the Code. In case the criminal proceeding against the petitioners in regard to non-compoundable offences is quashed, it would be in violation of said ratio in Madhu Limaye's it would be in violation of said ratio in Madhu Limaye's case (supra). Mahavir Prashad Gupta's case (supra) is distinguishable as in that case the matter was held to be covered in the first category of cases enumerated in the decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, as may be seen from the discussion made in Para 11 of the judgment at page 790. Petition thus deserves to be dismissed.

5. Resultantly, the petition is dismissed.