

(2019) 04 MP CK 0074

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 43389 Of 2018

Rakesh Rai And Another

APPELLANT

Vs

State Of M.P. And Smt. Rajni Rai

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 320(2), 482
Indian Penal Code, 1860 — Section 34, 109, 323, 354

Citation : (2019) 04 MP CK 0074

Hon'ble Judges : Vishnu Pratap Singh Chauhan, J

Bench : Single Bench

Advocate : Sankalp Kochar, Ashish Tiwari, U.S. Rawat

Final Decision : Dismissed

Judgement

1. Petitioners have filed this petition under Section 482 of Cr.P.C., being aggrieved by the order dated 06.03.2018 passed in Cr. Appeal No.02/2017 whereby, the application filed by the applicant under Section 320 (2) of Cr.P.C. for compounding the offence of Section 354 of IPC was dismissed by the appellate Court.

2. Facts giving rise to this petition, in short, are that respondent No.2 Smt. Rajni Rai, lodged FIR against the petitioners and Crime No.216/2014 was registered against the petitioner. After investigation, charge sheet for the offence punishable under Section 354, in alternate, 354 read with Section 109 and 323/34 of IPC has been filed against both the petitioners before the Court of JMFC, Umariya. Trial Court registered the matter as Criminal Case No.892/2014 and framed charge under Sections 354, 354 read with Section 109 and 323/34 of IPC and after trial learned trial Court passed judgment dated 23/01/2017. Learned trial Court acquitted both the petitioners for the offence punishable under Section 323/34 of IPC, however, convicted petitioner No.1-Rakesh Rai for the offence under Section 354 of IPC and petitioner No.2-Arun Rai for the offence under Section 354 read with Section 109 of IPC and sentenced each petitioners

to undergo one year RI and fine of Rs.200/- with default stipulation. The petitioners, being aggrieved by that judgment of conviction and order of sentence, preferred an appeal before the Sessions Court, Umariya which was registered as Criminal Appeal No.02/2017 and during pendency of the appeal the petitioners and prosecutrix, who is respondent No.2 herein, filed an application under Section 320(2) of Cr.P.C. for compounding the case. Learned appellate Court vide order dated 06/03/2018 has dismissed the application by giving a finding that after amendment in this section w.e.f. 2009, the offence punishable under Section 354 of IPC is non-compoundable.

3. Being aggrieved by that order dated 06/03/2018, the applicants filed Cr. R. No.1575/2018 before this Court and the same was dismissed vide order dated 12.10.2018. Against the impugned order dated 06.03.2018 [Annexure-A-2] the applicants have filed this petition on the ground that learned trial Court failed to appreciate the provisions of Section 320 (2) of the Cr.P.C. in proper perspective. The complainant does not want to prosecute the matter further. Section 354 of IPC is compoundable with the permission of the Court and in this premises, the application ought to have been allowed. Learned trial Court has erred in not applying a judicial and discretionary mind, therefore, the impugned order is unjust and contrary to the law and prayed to set aside the order and to allow the compromise application.

4. After hearing both the counsel, perused the provision of Section 320 of the Cr.P.C. The offence punishable under Section 354 of IPC was compoundable till the amendment incorporated in the Cr.P.C. i.e. in the year 2009 [New amendment inserted by Act No.5 of 2009 with effect from 31.12.2009]. Offence punishable under Section 354 of IPC is not included in the table substituted under Section 320 of the Cr.P.C. Now this question remain settled that the offence punishable under Section 354 of IPC after amendment w.e.f. 31.12.2009 are "non-compoundable offence". The date of alleged incident is 17.04.2014 i.e. after the amendment. In this premises also, the offence under Section 354 of IPC is non-compoundable. Learned appellate Court has not committed any error while rejecting the application filed under Section 320 of Cr.P.C., mentioning this offence is non-compoundable.

5. Learned counsel for the applicants submit that Court is empowered to compound the offence by invoking the powers envisaged under Section 482 of Cr.P.C., and submitted copy of the order dated 06/08/2018 passed in M.Cr.C. No.19896/2018 (Sujeet Rai vs. State of M.P.) and copy of the order passed by Delhi High Court in the case of Mahender Chauhan vs. The State (NCT of Delhi) and another, 2017 SCC Online Del 6782. In all these cases after institution of FIR, prosecutrix-complainant compounded the matter against the prospective accused and Hon'ble Court considered that in case after investigation charge-sheet filed, it is only wastage of time of the Court. However, in the case at hand, the situation is different because prosecutrix who is respondent no.2 herein deposed against the petitioners before the trial Court and on the basis of

statements of prosecutrix, the trial Court convicted both petitioners for the offence punishable under Section 354 of the IPC. Being aggrieved by the conviction and sentence, the applicants filed an appeal before the appellate Court. In appeal filed an application under Section 320(2) of Cr.P.C. The appellate Court has dismissed that application by giving a finding that the offence under Section 354 of IPC is non-compoundable and posted the case for final arguments. In this premises, this Court is not inclined to invoke the inherent power for setting aside the conviction and sentence of the petitioners as there may be a chance of winning over of the prosecutrix or to pressurize the prosecutrix to compromise the matter by adopting external or internal force.

6. In this view of the matter, this petition being devoid of any merit deserves to be and is hereby dismissed.