
(2008) 05 KL CK 0003

In the High Court Of Kerala

Case No : Criminal M.C. No. 2191 of 2008

Santhosh and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Constitution of India, 1950 — Article 141

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 482

Penal Code, 1860 (IPC) — Section 394

Citation : (2008) 05 KL CK 0003

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : S. Sasidharan Chempazhanthiyil and Vishnu S. Chempazhanthiyil, for the Appellant; Amjad Ali, Public Prosecutor and S. Mohammed Al Rafi, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—Does the dictum in Madan Mohan Abbot v. State of Punjab (1) permit composition of non-compoundable offences with the only difference that the parties have to come to the High Court u/s 482 Code of Criminal procedure (and not the lower courts u/s 320 Code of Criminal procedure) to achieve the benefit of such composition? This is the question raised for consideration in this case.

2. Petitioners are accused in a crime registered alleging offences punishable u/s 394 IPC. That crime was registered on the basis of the complaint of the third Respondent/de facto complainant. In the said FI statement the de facto complainant had alleged that he was the driver of a national permit lorry and that he had run into the company of certain persons who had wanted him to permit them to join him while he was taking alcoholic drinks. While the de facto complainant with some other strangers was taking drinks, Anr. group of five persons came and joined them. The de facto complainant was taken away from

the scene and he was robbed of an amount of Rs. 9,870/- which was in his possession. He was assaulted and injuries were allegedly caused to him. It is with these allegations that the de facto complainant filed the FI statement. Crime No. 153/08 was registered. Investigation is in progress. No person has been specifically arrayed as accused in the FIR.

3. The Petitioners had come to Anr. Bench of this Court earlier seeking anticipatory bail. That application was dismissed on the basis of the statement of the Prosecutor that the Petitioners have not been arrayed as accused so far.

4. Petitioners have now come before this Court along with the 3rd Respondent, who has entered appearance through counsel to confirm that he has no surviving grievance and all grievances of the de facto complainant have been redressed. According to him, he has realised now that accused persons have not committed any offences and it was under a mistaken impression that the FI statement happened to be lodged before the police. It is in these circumstances prayed that further investigation may be quashed and the Petitioners may be saved of the undeserved trauma of arrest and detention. Counsel for the 3rd Respondent confirms that the matter has been settled. An affidavit has been filed by the 3rd Respondent to confirm the theory advanced by the Petitioners.

5. Both counsel rely on the decision in *Madan Mohan Abbot v. State of Punjab*(1) to contend that no useful purpose is likely to be served by continuing with the investigation of this crime. It is submitted that no public policy is violated and no public interest is involved. No useful purpose will be served by continuing with the proceedings in the light of the compromise and in the light of the fact that the complainant has filed an affidavit to confirm such settlement. It is contended that a "common sense approach in the matter based on ground realities and bereft of the technicalities of the law" may be adopted by this Court and premature termination of the investigation in Crime No. 153/08 may be directed.

6. It is not difficult to come to the conclusion that the 3rd Respondent and the Petitioners have settled the dispute and the 3rd Respondent does not want any further action to be taken on the basis of his alleged grievance raised in the FI statement. In these circumstances the learned Prosecutor was directed to take instructions as to whether the State has any objections in the FIR being quashed invoking the powers u/s 482 Code of Criminal Procedure as explained in the decision in *Madan Mohan Abbot's case* (supra). The State through the learned Public Prosecutor opposes the application.

7. Crimes are essentially offences against the State and the entity primarily aggrieved in every crime is the society at large. The individual victim of the crime is not reckoned as the sole aggrieved in a crime in all modern systems of law. One of the important functions of the modern State is to ensure that a crime free society exists and citizens are not exposed to threat and risk of crime and violence. Ordinarily therefore, the aggrieved individuals cannot compound offences nor can they by such composition save the offenders of the

consequences which their criminal acts would invite against them. Primarily it is the duty of the State to maintain law and order and to control crimes and whether the individual aggrieved wants action against the criminal or not is jurisprudentially irrelevant. Law, however, does recognize a class of cases where such composition may be permitted, provided, the legislature declares such offences to be compoundable. This is clearly reflected in Section 320 Code of Criminal Procedure. Section 320 Code of Criminal Procedure declares that there can be no composition outside the limits of Section 320 Code of Criminal Procedure. It was hence understood clearly that the law is that non-compoundable offences cannot be compounded by private individuals and the inditees/offenders cannot claim exculpation or dropping of the proceedings against them on the basis of such alleged compromise/settlement of the individual aggrieved person.

8. When it comes to the law of composition of criminal offences under the Code of Criminal Procedure, there can be no semblance of doubt on the above clear stipulations of law. No composition of non-compoundable offences can be accepted by the courts u/s 320 Code of Criminal Procedure. The decision of the Division Bench in Thankamma v. State of Kerala (2) has made this clear. However, winds of change appear to be blowing. Though composition of non-compoundable offences is still not permissible u/s 320 Code of Criminal Procedure it appears that, the Supreme Court feels that there is nothing wrong in the powers u/s 482 Code of Criminal Procedure being invoked to quash the proceedings in a case where composition of non-compoundable offences is pleaded and established. The counsel rely on the decision in B.S. Joshi and Others Vs. State of Haryana and Another, and Madan Mohan Abbot's case (supra) in support of this proposition. Even in Thankamma v. State of Kerala (supra) it is mentioned that in a case where non-compoundable offences are compounded and the interests of justice point to the need of invocation of the powers u/s 482 Code of Criminal Procedure such invocation of powers and consequent premature termination of proceedings u/s 482 Code of Criminal Procedure is not impermissible. In Madan Mohan Abbot's case(supra) the Supreme Court has proceeded to make following observations in paragraph 5:

We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground realities and bereft of the technicalities of the law.

(emphasis supplied)

9. The law having so been declared, it will be impermissible for courts now to take a view that merely because an offence is not compoundable, the composition cannot lead to quashing of proceedings invoking the powers u/s 482 Code of Criminal Procedure.

10. The purist in criminal law may shudder at the thought that the High Courts shall be able to take the view on facts that an offence declared by the legislature to be non-compoundable is still one purely personal between the parties. He may not accept the theory that what is impermissible u/s 320 Code of Criminal Procedure can still be achieved by invoking the powers u/s 482 Code of Criminal Procedure. But it cannot be forgotten that powers reserved to the Court u/s 482 Code of Criminal Procedure are "awesome" and can in an appropriate case be invoked even "to do justice beyond the law". Section 482 does not confer any powers but only reserves to the High Court all powers which it always had to do justice. There is an underlying assumption that the superior court can perceive and identify an appropriate and fit case for invocation of such extraordinary jurisdiction.

11. But the dangers of mindless application of the Madan Mohan Abbot's case (supra) dictum must be alertly borne in mind. I am unable to understand the above passage as laying down, a rigid principle of law that, hereafter the composition of all non-compoundable offences though they cannot be accepted u/s 320, can be reckoned as just and sufficient ground to invoke the powers u/s 482 Code of Criminal Procedure. The Supreme Court was clearly stating the principle in the light of the peculiar facts and circumstances of the given case. No public policy was involved in that case, it is particularly noted. Possibility of a conviction was totally ruled out in the facts of that case, it must be perceived. The offences alleged in that case were ones which were purely personal in character as assessed by the Supreme Court, it must be noted. The dictum that a common sense approach has to be adopted on the basis of ground realities and bereft of the technicalities of law cannot certainly clothe the courts with authority and jurisdiction to ignore the law and attempt to achieve what each Court thinks is just. The dictum it must be noted was laid down to meet the compelling needs in the instant case which the Supreme Court decided where it was held that the powers u/s 482 Code of Criminal Procedure can and ought to be invoked in the interests of justice.

12. It would be myopic to understand the dictum in Madan Mohan Abbot's case (supra) extracted above to mean that all non-compoundable offences can be compounded by the aggrieved individual victim in that crime and the powers u/s 482 Code of Criminal Procedure can be invoked. The dictum is couched in careful language and such care must certainly be employed while applying the dictum also. Section 320 Code of Criminal Procedure contains the legislative wisdom as to what category of cases can be considered to be purely personal and private for the purpose of composition of crimes. That wisdom cannot perhaps be totally

ignored. In the strange facts of a given case like the one in B.S. Joshi's case (supra) and Madan Mohan Abbot's case (supra) invocation of the extraordinary inherent jurisdiction can of course be done to achieve the paramount interests of justice. But the distinction between the compoundable and non-compoundable offences cannot be held to be obliterated. The deduction of rationale and application of the dictum in B.S. Joshi's case (supra) and Madan Mohan Abbot's case (supra) must be done very carefully and cautiously.

13. I cannot be unmindful of the possible dangers involved in applying the dictum without due care and caution. Criminals will be able to hold the de facto complainants to ransom and compel them to settle the dispute and get the proceedings against them terminated prematurely without giving the police an opportunity to conduct proper investigation and ascertain the truth and bring the offenders to book. Those who resort to false implication may walk away with benefits extracted out of persons so implicated falsely who want to avoid the trauma of prosecutions. Injured persons and witnesses may turn hostile with impunity if such hostility is legally recognized and acted upon. The obligation of the citizen to co-operate with the State in its sublime duty of ensuring punishment to the victim is at stake.

14. What then is the answer? When offences are compounded or when the complainant/victim realises that earlier implication made by him was not justified should parties be left to endure the trauma of trial? Should witnesses be compelled to come to court and speak falsehood on oath during trial to bring about termination of the proceedings? If the ordinary courts cannot accept composition and the High Courts would not invoke the powers u/s 482 Code of Criminal Procedure what is the honest and straightforward method of achieving the result? B.S. Joshi's case (supra) and Madan Mohan Abbot's case offer greater elbow space for the High Court. But certainly it is for the legislature to consider whether the "ground realities" referred to in Madan Mohan Abbot's case (supra) calls for a fresh look at Section 320 Code of Criminal Procedure. The docket explosion in the High Courts in Section 482 jurisdiction has already started as fortune seekers can and have to approach the High Courts now with the plea that though non-compoundable u/s 320 Code of Criminal Procedure the dispute which they have settled and the offence that they have compounded is "purely personal" in nature and the "ground realities" must persuade the High Court to consider the question "bereft of the technicalities of law". From the point of view of harmony in society and from the point of view of unnecessary and non-productive litigations in court as also to preserve the sanctity of oath taken in court the legislature may have to undertake such a venture at the earliest. Inclusion of more cases in Section 320(1) and (2) and a residual stipulation in Section 320 Code of Criminal Procedure that all offences other than offences punishable with death or imprisonment for life can be compounded by the person aggrieved if the offence alleged in the assessment of the court is purely personal between the offender and the aggrieved may perhaps be the answer, if the system is seriously in search of answers.

15. The next question is whether in the facts and circumstances of this case, such invocation of the powers u/s 482 Code of Criminal Procedure is justified. The de facto complainant is not shown to have any particular friendship or acquaintance with the accused persons. Three persons along with the de facto complainant have come before this Court and pray that the investigation on the basis of the FIR registered u/s 394 IPC may be quashed. It will be insensitive and heartless for the court to conclude that the offence u/s 394 IPC, in the facts and circumstances of this case, does not involve any public interest or policy or that the dispute is one which is purely personal and private between the alleged inditees and the victim.

16. There can be no doubt about the dictum laid down by the Supreme Court in Madan Mohan Abbot's case (supra). The same is binding on all courts under Article 141 of the Constitution. But, I am not persuaded to agree that the dictum in letter and spirit would apply to the facts of the instant case. I am not persuaded to act upon the alleged settlement and composition and issue any directions u/s 482 Code of Criminal Procedure. In the facts and circumstances of the case I perceive the need for investigation to continue. I take note of the submission of the learned Public Prosecutor that some of the Petitioners have bad criminal antecedents. I take note of the submission that the role of the unidentified co-accused has to be ascertained and they have to be identified. Involvement of the miscreants in other similar crimes has also got to be probed into. Premature termination of investigation in this case accepting the composition will not be wholesome. That shall not cater to and shall defeat the interest of justice. Police must be given opportunity to continue investigation. Investigator must certainly take note of the present statement of the defacto complainant also while conducting the investigation. At any rate, the investigation need not now be terminated by invoking the jurisdiction u/s 482 Code of Criminal Procedure.

17. This Crl.M.C. is, in these circumstances, dismissed.

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