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**(1999) 12 OHC CK 0031**

**In the Orissa High Court**

**Case No :** Criminal Miscellaneous Case No. 1051 of 1998

Sri Ajaya Kumar Sahu and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

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**Date of Decision :** 02-12-1999

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 482

**Citation :** (2000) 18 OCR 687 : (2000) 18 OCR 11 : (2000) 1 OLR 89

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

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## Judgement

P.K. Tripathy, J.—Heard.

2. Learned counsel for the petitioner states that G.R. Case No. 516 of 1994 was registered on the FIR lodged by the O.P. No. 2. A clash between the informant's and the accused groups in a religious procession led to registration of the said case. After completion of investigation charge-sheet was filed and cognizance of the offences Under Sections 147, 148 323 324 307 506 149 IPC was taken by the SDJM, Kendrapara. He further states that even if both the parties have amicably settled their dispute and compromised, but some of the aforesaid offences being non-compoundable, petitioners have come up with this application u/s 482, Cr.P.C. with the prayer to quash the cognizance order. Learned counsel appearing for the informant-opp. party No. 2 admits the fact situation and concedes to the said prayer. Learned Addl. Standing Counsel, however, states that a compromise of the above nature is not sufficient to entertain the prayer of the petitioners.

3. Whether a non-compoundable offence can be ordered to be compounded by the High Court in exercise of the power u/s 482, Cr.P.C, is the relevant question to be considered in this case. In a recent decision of the Apex Court Arun Shankar Shukal v. State of Uttar Pradesh and Ors. (1999) 17 OCR 414 it has been propounded that -

"..... It is true that u/s 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary power to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well neigh settled that inherent power is not to be invoked in respect of any matter covered by specific exercise would infringe any specific provisions of the Code or if its provisions of the Code....."

Permissibility and impermissibility of compounding of offences has been properly comprehended and accordingly incorporated in Section 320. Sub-sees. (1) and (2) in the Criminal Procedure Code. Law makers are sure that no other offences except the above should be compounded and for that reason, it has been provided in Sub-section (9) of Section 320, Cr.P.C, that "No offence shall be compounded except as provided by this section."

4. Learned counsel for the petitioners stated that in some decisions of this Court including a Division Bench of this Court has held that compounding of offence of a non-compoundable nature, in exceptional case, can be made in exercise of the inherent power u/s 482, Cr.P.C. It is not necessary to refer to such decisions in view of a recent decision of a three Judges Bench of the Apex Court. In the case of Surendranath Mohanty and Anr. v. State of Orissa (1999) 17 OCR 25 the Apex Court have propounded that a non-compoundable offence cannot be compounded in view of legislative mandate in Sub-section (9) of Section 320, Cr.P.C. and if they are not falling in the categories of offences enumerated in Sub-sections (1) and (2) of Section 320, Cr.P.C. Their Lordships have further propounded that contrary ratio in the case of AIR 1988 2111 (SC) and Y. Suresh Babu v. State of A.P. and Anr. JT 1987 (2) 361 be treated as per incuricun.

5. At this stage, learned counsel for the petitioner states that in view of the above noted decisions of the Apex Court, he does not press the prayer to quash the proceeding. He further states that under a mistaken belief and having no element of mischief value, petitioner did not appear in the Court below because of the compromise between the parties. He further states that presently non-bailable warrant of arrest are pending against the petitioners. After being conscious of the position of law, as noted above, they prefer to surrender in the Court of SDJM Kendrapara on 15.12.1999 and direction may be issued to the Courts below to dispose of their bail applications during the course of the day by allowing the same. Learned Additional Standing Counsel on the other hand states that the Courts below may consider the bail applications and if the petitioners will be allowed to go on bail then stringent conditions should be imposed to avoid

future default and learned SDJM may be directed for expeditious and early completion of the proceeding in his Court.

6. Keeping in view the aforesaid submissions it is directed that if the petitioners shall surrender and apply for bail by the aforesaid date, learned SDJM shall do well to consider their bail applications during the first hour of the day. In the event of rejection, if application for bail shall be moved before the Additional Sessions Judge, Kendrapara that Court may do well to hear and dispose of the bail application during the course of the day and for that purpose the LCR and case diary may be made available to him by the SDJM.

The NBW need not be executed upon the petitioners till 15.12.1999.