

(1995) 08 KAR CK 0077
In the Karnataka High Court
Case No : Criminal Appeal No. 490 of 1995

State of Karnataka

APPELLANT

Vs

Adivappa Ningappa Ranekkanavar

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 465
Penal Code, 1860 (IPC) — Section 326

Citation : (1995) ILR (Kar) 2782 : (1995) 6 KarLJ 1

Hon'ble Judges : Vishwanath, J;Mirdhe, J

Bench : Division Bench

Advocate : A.B. Patil, Addl. S.P.P, for the Appellant; S.P. Kulkarni, for the Respondent

Final Decision : Dismissed

Judgement

Mirdhe, J.

This Criminal Appeal is filed by the State - appellant against the judgment dated 30.8.94 passed by the II Additional Munsiff and J.M.F.C., Gadag in S.C. 59/94 acquitting the respondent-accused of the offence punishable u/s 326 I.P.C. on the ground that the case is compromised.

2. We have heard the learned Additional State Public Prosecutor Sri A.B. Patil for the State - appellant and the learned Counsel for the respondent - accused fully and perused the records of the case.

3. The respondent-accused was charged for the offence punishable u/s 326 I.P.C. The J.M.F.C. has acquitted the accused on the ground that the case is compromised and no one would support the prosecution case. From the order it is apparent that he knows that the offence alleged by the complainant against the respondent is not compoundable. In spite of that he has granted permission to compromise the matter. We think that the J.M.F.C. should not have exercised the powers not vested in him by giving permission to compound the offence

which was not compoundable. It is a serious irregularity committed by the J.M.F.C. u/s 465 Cr.P.C. the Appellate Court can reverse or alter the order of the Subordinate Court only if any error, omission or illegality is committed by the Subordinate Court which leads to any failure of Justice. In this case the complainant who was injured himself came forward to compromise the matter. In view of this no other evidence is available to the prosecution to prove the guilt of the accused beyond reasonable doubt. We think that the error committed by the Magistrate has not led to any failure of Justice in this case in view of the fact that the complainant who suffered the injuries at the hands of the accused came forward to compromise the matter. In view of this position, we are not inclined to admit the Appeal as it will be an exercise in futility. However, we think that the proper course for the J.M.F.C. would have been to record the evidence of some witnesses and thereafter to proceed to pass the orders instead of granting permission to compound, which power is not vested in the Magistrate. Hence, we warn the concerned J.M.F.C. not to commit such illegality in future. Hence, we proceed to pass the following order :-

The Appeal is not admitted. It is dismissed. The Registrar General is directed to convey the direction to the J.M.F.C. wherever he is.