

Mallappa and Others Vs. The State of Karnataka, Represented by Addl. SPP, Gulbarga and Another

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Court : Karnataka Kalaburagi

Decided On : Apr-18-2016

Judge : K.N. Phaneendra

Appeal No. : Criminal Appeal No. 3696 of 2010

Appellant : Mallappa and Others

Respondent : The State of Karnataka, Represented by Addl. SPP, Gulbarga and Another

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., praying to set aside the judgment and order of conviction dated 07/12.08.2010 passed in Sessions Case No.149/2009, by the Fast Track Court-I/II at Bijapur.)

1. The learned counsel for the appellants submitted that the complainant/injured has compromised the matter with the appellants therefore, he may be permitted to implead the defacto complainant as one of the respondents in this case. In view of the compromise entered into between the parties, the learned counsel for the appellants is permitted to implead the defacto complainant as respondent No.2 in this case. The amendment is carried out to that effect.

2. Sri Mahantesh Patil, learned counsel has filed vakalath for respondent No.2.

3. A joint memo has been filed by the appellants and respondent No.2 under Section 482 of Cr.P.C., seeking permission of the Court to permit the appellants and respondent No.2 to compound the offences under Sections 341, 323, 324, 504, 307 r/w Section 34 of IPC under which the appellants were convicted by the Fast Track Court-I/II, Vijayapur, in S.C.No.149/2009.

4. Appellant Nos.1 to 4 and respondent No.2 are present before the Court. Appellant No.1 and respondent No.2 have filed affidavits before the Court. Appellants and respondent No.2 submitted that they are close relatives to each other. Respondent No.2 has submitted before the Court that appellants are the sons of his paternal uncle. They want to maintain cordial relationship between themselves in future and therefore, they want to square up the dispute between themselves. It is further submitted that the compromise arrived at is voluntary and nobody has coerced or influenced them. Therefore, in order to maintain their cordial relationship in future, they have pleaded for setting aside the order passed by the learned Presiding Officer and to acquit the appellants.

5. It is seen from the records that the appellants were convicted for the offences punishable under Sections 341, 323, 324, 504 and 307 r/w Section 34 of IPC. The appellants were sentenced to undergo simple imprisonment for six months for the offences punishable under Sections 341, 323, 324, 504 r/w Section 34 of IPC. The appellants were also sentenced to undergo simple imprisonment for three years for the offence punishable under Section 307 r/w Section 34 of IPC and also to pay fine of Rs.5,000/- in default, to undergo simple imprisonment for six months.

6. The Court has expressed its doubt as to whether in the criminal appeal the Court has the power to permit the parties to enter into compromise even by invoking under Section 482 of Cr.P.C., as provision under Section 320 of Cr.P.C. cannot be invoked at any stretch of imagination either by the Trial Court or by the appellate Court. In this regard, the learned counsel for the appellants has drawn my attention to the decision of the Hon'ble Apex Court reported in 2014 (5) SCC (CRI) 267 in the case of Yogendra Yadav and others vs. State of Jharkhand and another, wherein the Hon'ble Apex Court has observed after relying upon the decision of the Hon'ble Apex Court in the case of Gian Singh vs. State of Punjab

reported in (2012) 10 SCC 303 that,-

"Sections 482 and 320 - quashing of non-compoundable offences in view of the compromise between the parties. High Court can quash criminal proceedings under Section 482 even though offence alleged is non-compoundable if parties have amicably settled their dispute and victim has no objection. Further, this would depend on facts of each case. Offences which involve moral turpitude, grave offences like rape, murder cannot be effaced by quashing proceedings because they have harmful effect on society and are not restricted to two individuals or groups. Quashing of such offences may send a wrong signal to society. However, where High Court is convinced that offences are entirely personal in nature not affecting public peace and tranquility and quashing of proceedings on account of compromise would secure ends of justice, it may quash the same. In such cases, prosecution becomes lame and pursuing such lame prosecution becomes waste of time and energy and also likely to unsettle compromise and obstruct restoration of peace. On facts, in the criminal appeal before the Supreme Court, though offences under Sections 326 and 307 IPC are uncompoundable, but considering compromise petition filed by parties, and fact that they were neighbours and living peacefully, pending proceedings directed to be quashed."

7. This Court in Criminal Revision Petition No.2557/2011 dated 31.10.2011 relying upon a decision in the case of B.S.Joshi and others vs. State of Haryana and another reported in 2003 CRI.L.J. 2028 has allowed the compromise application and set aside the judgments of two Courts i.e., Trial Court as well as appellate Court and acquitted the accused persons considering the facts of that particular case.

8. Looking to the above circumstances and the law laid down by the Hon'ble Apex Court, it is crystal clear that even in the criminal appeals instead of driving the parties to file another petition under Section 482 of Cr.P.C., the Court can very well exercise same power under the criminal appeal itself if the facts and circumstances falls within the guidelines as laid down by the Hon'ble Apex Court in the above case.

9. As could be seen from the factual matrix of this case and as admitted by the parties, appellants and respondent No.2 are close relatives. The complainant who has suffered injury has forgiven misconduct of the appellants and in view of their relationship, they want to continue their cordial relationship between each other and to lead their life happily in future. The Hon'ble Apex Court has allowed the compromise petition in Yogendra's case wherein the parties have compromised on the ground that the parties were neighbours and they want to live peacefully in future. In this particular case, it is the relationship between the parties plays a dominant role. The dispute between the parties is with reference to sharing of water in the canal. It appears, the appellants and respondent No.2 are the adjacent land owners and close relatives to each other. Considering the facts, I am of the opinion that the differences between the parties are purely personal in nature and is not affecting public peace or tranquility. Allowing the parties to compromise between themselves would in fact secure the ends of justice. Under the above circumstances, there is no legal impediment for this Court to exercise power under Section 482 of Cr.P.C., and set aside the order passed by the learned Presiding Officer by allowing the parties to compound the offences.

10. In view of the above reasons, I pass the following:

ORDER

The joint memo filed under Section 482 of Cr.P.C., is hereby allowed. Consequently, the sentence passed by the learned Presiding Officer, Fast Track Court-I/II, Vijayapur, in S.C.No.149/2009 dated 12.08.2010 is hereby set aside and the appellants are acquitted of the offences punishable under Sections 341, 323, 324, 504, 307 r/w Section 34 of IPC. Accordingly, the appeal is allowed. However, the fine amount if any deposited by them before the Trial Court is confiscated to the State as expenses of the trial.

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