

State of Maharashtra Vs. Raju Alias Raya and Another

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Court : Mumbai

Decided On : Sep-29-1992

Reported in : 1993(1)BomCR42; 1993CriLJ3571

Judge : B.V. Chavan, J.

Appeal No. : Cr. Revn. Appln. No. 56 of 1992

Appellant : State of Maharashtra

Respondent : Raju Alias Raya and Another

Advocate for Def. : A.B. Choudhari, Adv.

Advocate for Pet/Ap. : Smt. Indira Bodade, A.P.P.

Judgement :

ORDER

1. The State has challenged the order passed by J.M.F.C., Wardha on 14-12-91 acquitting the accused by granting permission to compound offence under S. 394, r/w. 34, I.P.C.

2. Charge-sheet was filed against the respondents in the Court of J.M.F.C., Wardha on the allegation that on 20-3-85, respondents entered one Friends Restaurant and by giving threat to his life with a knife, they robbed P.W. 1 of a cash of Rs. 92/- from his counter and in the course of that transaction accused No.

2 also voluntarily injured P.W. 1 when he tried to prevent them and thereby committed offence punishable under Sec. 394, r/w. 34, I.P.C.

3. It seems that on behalf of the prosecution an application Exh. 22 was made on 16-10-91 to commit the case to the Sessions Court since the material before the Magistrate disclosed offence u/S. 397 r/w. 34, I.P.C., which was exclusively triable by the Court of Session. In the meantime, before any order could be passed on this application, the matter was referred to Lok Nyayalaya for settlement. It appears that the accused and the affected persons before the Lok Nyayalaya settled the matter. It was thereafter that the matter was placed for passing orders before the J.M.F.C., Wardha. The learned Magistrate has recorded an order that compromise arrived at between the parties at Lok Nyayalaya was admitted by the parties. Therefore, permission to compromise the offence was granted and the accused acquitted.

4. Although, the parties appear to have settled the matter in the Lok Nyayalaya, in law an offence even u/S. 394 r/w. 34, I.P.C. is not compoundable either with or without the permission of the Court. In the circumstances, order granting permission to compound is liable to be set aside and the matter will have to be sent back to JMFC, Wardha for disposal in accordance with law.

5. The revision application is allowed. Order dated 14-12-91 granting permission to compound and acquitting the accused is set aside in Cr. Case No. 152/91 and the J.M.F.C., Wardha is directed to proceed with the case from the same stage at which it was before the order dated 14-12-91 was passed. J.M.F.C. Wardha is also directed to consider the application filed on behalf of the prosecution on 16-10-91 at Exh. 22 and pass orders in accordance with law.

6. Application allowed.