

State of Karnataka Vs. Cyabrial

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Court : Karnataka

Decided On : Feb-25-2005

Reported in : 2005CriLJ2352; ILR2005KAR1365; 2005(2)KarLJ500

Judge : A.C. Kabbin, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320(2), 320(6), 320(8), 321(5) and 360; [Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 325

Appeal No. : Cr.R.P. No. 245/2003

Appellant : State of Karnataka

Respondent : Cyabrial

Advocate for Def. : Basavaraj, Adv. ;for V.M. Sheelavant, Adv.

Advocate for Pet/Ap. : S.C. Rajendra Reddy, HCGP

Disposition : Petition allowed

Judgement :

ORDER

A.C. Kabbin, J.

1. The point for consideration in this revision petition filed by the State challenging that portion of the judgment by which the respondent was permitted to compound

the offences punishable under Sections 323 and 325 of the IPC is whether a Trial Court can permit compounding of offences after convicting the accused for the said offences.

2. The respondent (the accused No. 1) and two others (the accused Nos.2 and 3) were tried by the Presiding Officer of the Fast Track Court, Bellary, in S.C. No. 11/1998 for offences punishable under Sections 323, 324, 325, 504, 506, 307 read with Section 34 of the IPC. The prosecution allegation was that on 24-08-1997 at about 6.30 A.M., at the house of C.W.1, the respondent in furtherance of his intention commonly shared by the accused Nos.2 and 3, attempted to commit the murder of the complainant by attacking him with a sickle. It was further alleged that he assaulted C.Ws.2 and 3 and caused injuries to them and that in that event, he used vulgar language against C.Ws.1 to 3.

3. On behalf of the prosecution, twelve witnesses were examined and on conclusion of the trial the learned Presiding Officer of the Fast Track Court delivered the judgment acquitting the accused Nos.2 and 3 of all the offences, but convicting this respondent of the offences punishable under Sections 323 and 325 of the IPC. Thereafter a joint application was moved by the respondent and P.Ws.1, 2 and 7 under Section 320(2) of the Code of Criminal Procedure reporting compounding of an offence punishable under Section 323 of the IPC and praying for permission to compound the offence under Section 325 of the IPC. The learned Judge permitted compounding of the offences and in the result ordered that the respondent stood acquitted under Section 320(8) of the Code of Criminal Procedure of both the offences. It is that portion of the order, by which the respondent was acquitted after conviction, that has been challenged in this petition.

4. Sri. Rajendra Reddy, the learned High Court Government Pleader submits that the provisions of Section 320 of the code of Criminal Procedure though provide for compounding of certain offences by the parties and compounding of some offences with permission of the Court, that provision cannot be availed of by a Trial Court after it delivers judgment regarding the conviction or acquittal. He further submits that if an accused is convicted, thereafter compounding of offences can

be only if an appeal is preferred and leave for composition is sought for in appeal. He further submits that under sub-section (6) of Section 320, the High Court in exercise of its power of revision under Section 401 also can exercise the power by permitting the compounding of the offences, but that Trial Court cannot resort to such method after judgment of conviction.

5. Sri. Basavaraj, learned Counsel for the respondent submits that there is no bar under Section 320 of the Code of Criminal Procedure to permit composition. He refers to the decision of the Patna High Court in the case of RAMPHAL GOPE AND ORS. v. THE STATE OF BIHAR, 1964 (2) Cril.L.J. 111 in which according to him, such compounding was permitted. On going through the said decision, I do not find that the composition permitted therein was by the Trial Court after the accused therein was convicted of the offence for which there was compounding of the offence.

6. On a perusal of the provisions of the Section 320 of the Code of Criminal Procedure particularly sub-section (8) of Section 320 it is clear that composition of offences by the Trial Court provided therein is before judgment is delivered in the case. After judgment of conviction, composition can be permitted by an Appellate Court under sub-section (5) and the Revisional Court under sub-section(6).

7. The Supreme Court had an occasion to consider this point in TANVEER AQUIL v. STATE OF MADHYA PRADESH AND ANOTHER, 1990 (Supplement) SCC 63 . In that case the appellant had been convicted under Section 324 of the Indian Penal Code and sentenced to one year's rigorous imprisonment with a fine of Rs.500/-. The High Court while disposing of the appeal in the first instance did not have the assistance of the petitioner's counsel. After the pronouncement of the judgment, the counsel appeared and pleaded for an opportunity of hearing and at that stage the High Court again heard the matter and added the Post Script in the judgment confirming the conviction and the sentence. Thereafter, the petitioner moved the High Court for permission to compound the offence. He stated that he had paid a sum of Rs. 3,500/- to the complainant. The petitioner also filed an affidavit of the complainant in which it was stated that he was paid Rs. 3,500/- by the accused-petitioner. But the High Court declined to take into consideration that

application since it had disposed of the matter already. The appellant moved the Supreme Court. The Supreme Court did not disturb the finding of the High Court, but in view of an 'application before it for permission to compound the offence, directed the Trial Court to consider the matter.

8. It is therefore clear that once a Court passes a judgment of conviction, it has to pass order regarding sentence in accordance with law, regard being had to the provisions of Section 360 of the Code of Criminal Procedure in appropriate cases, and it cannot permit compounding of offence at that stage. However if further order is passed by the Trial Court and if it is challenged in appeal, the Appellate Court can consider the prayer for compounding of the offence under sub section (5) of Section 321 and if a revision is preferred either to the Court of Sessions or to the High Court, the revisional Court can consider the same under sub-section (6) of Section 320 of the Code of Criminal Procedure.

9. For the above said reasons, this petition is allowed and setting aside that portion of the impugned judgment of the learned Trial Judge by which the respondent had been acquitted under Section 320(8) of the Code of Criminal Procedure by permitting compounding of offences under Sections 323 and 325, is set aside and the matter is remanded to the Trial Court to pass sentence, in accordance with law in the light of the observations made above.