

Ram Asrey Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-29-1988

Reported in : 1990CriLJ405

Judge : V.P. Mathur, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 225 and 354; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 401 and 439

Appeal No. : Criminal Revn. No. 409 of 1988

Appellant : Ram Asrey

Respondent : State of U.P.

Advocate for Def. : A.G.A. and ;Ramjee Pandey, Adv.

Advocate for Pet/Ap. : Pankaj Srivastava and ;W.H. Khan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

V.P. Mathur, J.

1. Against three persons namely Ram Asrey -- the present revisionist, Hikmat Ullah and Pyare, a charge sheet was submitted for offences under Sections 354

and 225 of the Penal Code. The case came up for disposal before Mr. C. L. Verma, Munsif Magistrate, Banda. The learned Magistrate found Ram Asrey guilty on a charge under Section 354, I.P.C. and Hikmat Ullah and Pyare each guilty on a charge under Section 225, IPC. Pyare was found to be an old man of 55 or 60 years of age and was found to be unable to see. Hikmat Ullah was the son of Pyare. Pyare was sentenced to six months' rigorous imprisonment and Hikmat Ullah to one year's rigorous imprisonment under Section 225, I.P.C. Ram Asrey was sentenced to one year's rigorous imprisonment under Section 354, I.P.C.

2. Criminal Appeal No. 18 of 1988 was filed against his conviction and sentence by Ram Asrey and it came up for disposal before Mr. S. K. Gupta, the then Sessions Judge of Banda. He dismissed the appeal and upheld the conviction and sentence passed against Ram Asrey. Against this order, the present revision has been filed on behalf of Ram Asrey.

3. This Court admitted the revision only on the point of sentence. During the pendency of the revision. Ram Asrey entered into a compromise with Smt. Phool Mati wife of Chunnoo in respect of whom the charge under Section 354, I.P.C. was framed and found proved. Chunnoo also signed the application for permission to enter into compromise and in para 2 of the, affidavit filed in support of this petition, the terms of the compromise were noted down. It was mentioned that Ram Asrey had paid sufficient monetary compensation to Smt. Phoolmati who had now no grievance whatsoever and was keen to see that Ram Asrey is acquitted and his future career as a government servant does not suffer on account of this case. The compromise petition along with affidavit was sent down to the Chief Judicial Magistrate of Banda for verification. He has returned it along with the order sheet of his Court, on which the verification has been made. The compromise has been verified by Ram Asrey in person and by Chunnoo and Smt. Phoolmati who have been identified by their counsel. It is now contended that in terms of this compromise, the revision should be allowed and the conviction and sentence of the revisionist be set aside.

4. A legal point arose for determination and it was whether in a case in which revision is admitted only on the question of sentence, can a composition of the

offence be allowed and if so, what will be its impact and extent ?

5. A similar case came up for decision before the Patna High Court in the matter of Sheo Saran Thakur v. Bishwanath Thakur, AIR 1968 Patna 207. The provisions of the old Cri. P.C. under Section 439 are the same, as have been laid down under Section 401 of the new Cri. P.C. 1973. It is now well settled that the powers of the High Court in allowing composition of an offence can be exercised during the pendency of the revisional application. The High Court begins to act from the time it admits the revisional application and continues to exercise the revisional powers till the revision is finally disposed of. It will make no difference, if the revision has been admitted only on the question of sentence or whether an open rule has been given at the time of revision, so long as the revision is not finally disposed of. It means, therefore, that the High Court can exercise the powers allowing the composition of offence in appropriate cases all through the period when the revision remains pending and the fact that the revision might have been admitted only on the question of sentence can have no effect upon the powers of the High Court to accept a composition in the entire case. Since the High Court while exercising its powers will not be interfering with the merit of the case, but will only be giving effect to the compromise that is arrived at between the parties and which can be legally looked into and given effect to, hence the matter that the revision might have been admitted only on the question of sentence loses all its importance. However, there will be no power to allow the composition of an offence, if the revision has outright been dismissed in limine at the time of its admission or after final hearing.

6. This settles the matter finally and the mere fact that the present revision was admitted only on the point of sentence will have no effect upon the powers of this Court to accept the compromise and act on it.

7. Section 354 of the Penal Code, is compoundable with the permission of the Court. Parties applied for compounding the offence. The lady who was the victim of the offence joined the petition along with her husband. It appears that she has received some monetary compensation. The parties are the residents of the same place. Ram Asrey is a government servant. It is only proper that the offence

should be allowed to be compounded in order to ensure good relations between the parties and in order to see that Ram Asrey does not suffer in his government service on account of this offence. The petition to compromise is, therefore, allowed and since the parties have already verified the compromise, this revision is allowed, with the result that the conviction of the revisionist Ram Asrey as made by Mr. C. L. Verma, Munsif Magistrate, Banda, vide order dt. 27-2-1988 and the sentence of one year's rigorous imprisonment, which have both been confirmed in appeal by Mr. S. K. Gupta, Sessions Judge, Banda, vide, his order dt. 5-4-1988 are set aside. The applicant-revisionist Ram Asrey is acquitted of the charge under Section 354 of the Penal Code.

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