

State of Sikkim Vs. Deepen Rai and ors.

State of Sikkim Vs. Deepen Rai and ors.

SooperKanoon Citation : sooperkanoon.com/497048

Court : Sikkim

Decided On : May-29-2000

Reported in : 2001CriLJ3166

Judge : Ripusudan Dayal, C.J. and; Anup Deb, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320, 320(9) and 321;
Indian Penal Code (IPC) - Sections 34, 323 and 392

Appeal No. : Cri. Revn. No. 38 of 2000

Appellant : State of Sikkim

Respondent : Deepen Rai and ors.

Advocate for Def. : S.S. Hamal,; Deepen Rai,; Manoj Tamang and;

Advocate for Pet/Ap. : S.P. Wangdi, P.P. and; Karma Thinlay, Asst. Govt. Adv.

Disposition : Petition allowed

Judgement :

Ripusudan Dayal, C.J.

1. This criminal revision was registered by this Court suo motu to be satisfied as to the correctness, legality and propriety of the Order dated 24th February, 2000 by Sri S. W. Lepcha, the then Chief Judicial Magistrate, East.

2. The three accused were charged under Section 392/323, IPC read with Section 34. All the respondents namely, Deepen Rai, Manoj Tamang and the complainant Robin Tamang filed a compromise petition dated 19th February, 2000 that they had amicably compromised the matter outside the Court. There cannot be any doubt that the offence under Section 392 IPC could not be compounded under the provisions of Section 320 of the Code of Criminal Procedure, 1973. Thereafter, an application was filed by Sri N. T. Bhutia, learned Public Prosecutor under Section 321 of the Code stating that since the parties had compromised the matter amicably with the intervention of their well wishers, it was felt that proceeding further with the trial would be meaningless. By this application, a prayer was made to allow the Public Prosecutor to withdraw the case in the interest of justice. On the same date, i.e. on 24th February, 2000, the application for withdrawal of the case was allowed by the learned trial Court on the ground that since the matter had been compounded, it would be a futile exercise to proceed further in the matter.

3. The question as to whether consent should or should not be granted for withdrawal is a question to be decided by the Court in a judicial manner. It is well settled that it is a judicial act. Consent may be accorded where, by giving the consent, interest of administration of justice would be advanced. The mere fact that a non-com-poundable offence has been compounded by the parties is no ground for according the consent. Such consent would be contrary to the spirit of Section 320 of the Code of Criminal Procedure which in Sub-section (9) states that no offence shall be compounded except as provided by that Section. If the learned Public Prosecutor seeks consent of the Court to withdraw from the prosecution and the Court grants consent only for the reason that the matter has been compounded, that would amount to violating the principle underlying the provision of Sub Section (9) of Section 320 of the Code. Since consent was accorded by the learned trial Court without having regard to the principles which have bearing on the matter, the order dated 24-2-2000 is liable to be set aside. Shri S. S. Hamal, learned Counsel for the respondents concedes to this position.

4. In the result, the revision is allowed. The impugned order dated 24-2-2000 is set aside and the matter is remitted to the learned Chief Judicial Magistrate, East, for

proceeding in accordance with law. Accused persons shall appear in that Court on 12th June, 2000.

Let a copy of this Order be sent to Shri S.W. Lepcha who is now the Sessions Judge, East for his information and guidance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com