

Rajkumar Vs. State

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Court : Madhya Pradesh

Decided On : Apr-17-1998

Reported in : 1998CriLJ4518

Judge : Dipak Misra, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 320, 320(1), 320(2), 320(9) and 482; Indian Penal Code (IPC) - Sections 34, 307, 394 and 498A

Appeal No. : M.C.R.C. No. 519/1998

Appellant : Rajkumar

Respondent : State

Advocate for Def. : B.P. Athya, Govt. Adv.

Advocate for Pet/Ap. : Manish Datt and ;H. Choudhary, Advs.

Disposition : Application dismissed

Judgement :

ORDER

Dipak Misra, J.

1. Invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (in short 'the Code') the husband-petitioner has assailed the

order dated 18-12-97 passed by the learned Judicial Magistrate, First Class, Anuppur in Criminal Case No. 493/96 whereby he has refused to grant permission for compounding of the offence punishable under Section 498A of the Indian Penal Code (in short 'the IPC').

2. The essential facts giving rise to the present petition are that on the basis of an FIR lodged by the wife of the petitioner the criminal law was set in motion which ultimately gave rise to Criminal Case No. 493/96 for an offence punishable under Section 498A of IPC in the Court of Judicial Magistrate, First Class Anuppur. After filing of the charge-sheet in the Court, the petitioner and his wife reached an amicable settlement and the misunderstanding between them came to end. They started leading a normal conjugal life. Because of this changed scenario, the informant-wife filed an application on 18-12-97 for grant of permission to compound the offence. The learned trial Magistrate considered the application on the same day and by the impugned order came to hold that the offence in question, was not compoundable as envisaged under Section 320(2) of the Code and accordingly refused the prayer.

3. Assailing the aforesaid order Mr. H. Choudhary learned counsel for the petitioner has submitted that this Court in exercise of power under Section 482 of the Code can grant permission for compounding of the offence in view of the changed factual position. It is submitted by him that if permission is not granted the criminal case would continue and its continuance is likely to create a dent in the matrimonial relationship of the petitioner and his wife. Mr. Manish Datt who was present in Court at the time of hearing of this application, volunteered to assist the Court and also made his submissions.

Mr. Athya, learned G.A. for the State has opposed the prayer of the petitioner on the ground that when the offence under Section 498A of the Code is not compoundable under the provision of Section 320 of the Code, this Court in exercise of its inherent jurisdiction should not grant permission for compounding.

4. The sole question that arises for determination is whether this Court in exercise of power conferred on it under Section 482 of the Code, can grant permission for compounding of an offence which is not compoundable. Section 320(1) of the

Code enumerates the offences punishable under certain provisions of IPC which may be compoundable by the persons mentioned therein. Section 320(2) enumerates the offences punishable under certain provisions of the IPC which can be compounded only with the permission of the Court before which the prosecution is pending. Under Section 320(9) it has been provided that no offence shall be compounded except as provided by the said section. An offence under Section 498A of the Code does not come in any of the categories. Mr. Datt and Mr. Choudhary learned counsel relied upon the decision rendered in the case of Mahesh chand v. State of Rajasthan AIR 1988 SC 2111. In the aforesaid case, the accused persons were acquitted by the trial Court and the High Court in appeal, set aside the order of acquittal and convicted the accused persons of the offence punishable under Section 307 of IPC. The order of conviction was challenged before the Apex Court in a Special Leave Petition and before the Apex Court the parties filed a petition seeking permission to compound the offence. The Supreme Court while accepting such plea, directed the trial Judge for grant of permission to compound the offence. Learned counsel for the petitioner have urged that this Court, in the obtaining factual matrix, can direct the learned trial Judge to accord permission to compound the offence. On a reading of the decision rendered in the case of Maheshchandra (supra) it is noticed that it is not a decision wherein the Apex Court has held that the High Court in exercise of jurisdiction under Section 482 of the Code can grant permission for compounding in respect of a non-compoundable offence. On a close scrutiny of the provisions enshrined under Section 320 of the Code it is apparent that the legislature has provided all the contingencies where an offence can be compounded. That apart, under Sub-section (9) it has been clearly stipulated no offence shall be compounded except as provided under Section 320 of the Code. In view of the specific prohibition contained in the said provision the pivotal question that emerges is whether this Court, in exercise of power conferred on it under Section 482 of the Code, can grant permission. At this juncture, I may refer to a decision rendered by the Andhra Pradesh High Court in the case of Annamdevula Srinivasa Rao v. State of A.P. 1995 Cri LJ 3964 wherein their Lordships held as follows (at page 3969) :-

The inherent jurisdiction of the High Court under Section 482, Cr.P.C., is available to be exercised for advancement of justice and if any attempt is made to abuse the

process of any Court, the High Court shall interfere and exercise its jurisdiction to prevent the same. It shall not pass any order or issue any direction contrary to the provisions of the code. The inherent jurisdiction conferred upon the High Court merely enables it to deal with the situation which is not contemplated by the Code to give effects to any order passed under the Code. This inherent power of the High Court can never be exercised compelling the subordinate criminal Courts to act in any manner contravening the provisions of the Code. Such an order can never be termed as an order passed to prevent the abuse of the process of any Court it cannot also be said that such order would secure the ends of justice. Every legal power has its own limitations. There is nothing like unlimited power. So also the power conferred upon the High court under Section 482 of the Code of Criminal Procedure.

(Quoted from the placitum)

The High Court of Bombay in the case of State of Maharashtra v. Raju alias Raya 1993 Cr LJ 3571 has held as follows (at page 3572):

Although, the parties appear to have settled the matter in the Lok Nyayalaya, in law an offence even under Section 394 r/w 34, IPC 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. This Court in the case of State of M.P. v. Saud, Criminal Appeal No. 15/91 held as follows :The jurisdiction of the High Court is invoked under the provisions of the Code of Criminal Procedure either in revision or appeal and the restrictions imposed on the power of the Criminal Court in the matter of granting permission to compound is as much applicable to the Court of Magistrate and Court of Sessions Judge as to the High Court. To say that the Supreme Court in a given case adopted a particular course of action is one thing; to say that the High Court or even an inferior criminal Court can do whatever the Supreme Court did is quite a different thing. The jurisdiction of the High Court should be traced to some provision of the Code of Criminal Procedure. Under the scheme of Section 320, no person has right to compound any offence not specifically mentioned therein.

5. In view of the aforesaid enunciation of law, there remains no iota of doubt that if an offence is non-compoundable and does not fall in the purview of Section 320 of the Code, the High Court in exercise of its inherent jurisdiction cannot grant possession for compounding. Hence, the prayer of the petitioner is not entertainable. Accordingly, the application stands dismissed.

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