

Sanatan Ram and ors. Vs. State and ors.

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Court : Orissa

Decided On : Jun-25-1990

Reported in : 1991CriLJ758; 1991(I)OLR23

Judge : S.C. Mohapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320, 321 and 482

Appeal No. : Criminal Revision No. 672 of 1989

Appellant : Sanatan Ram and ors.

Respondent : State and ors.

Advocate for Def. : H. Kanungo, Addl. Government Adv.

Advocate for Pet/Ap. : P. Palit, D. Mohanta and M.P. Mohapatra

Judgement :

S.C. Mohapatra, J.

1. In this revision, petitioners Seek to quash cognisance of offences taken Under Sections 147/148/336/427/454/380/294/506/436 with 511 read with 149 IPC.

2. Prosecution case is that on 25-3-1981 at about 12 noon, petitioners committed rioting being armed with deadly weapons endangered the life of the inmates of the informant in G. R. Case No. 75 of 1989 causing damage to the house and

household articles. They committed theft of the antenna and booster of the Television by breaking open the house after rebuking in filthy language and attempted to cause death with threatening dire consequence. Petitioners threw fire with intent to destroy the house in furtherance of their common object. After investigation, charge sheet was submitted on 4-7-1989 and cognizance was taken. on that basis., Against the aforesaid order, petitioners approached this Court in Criminal Revision No. 541 of 1989 and by order dated 11-12-1989 the order was set aside and matter was remitted back to the Court of Sub-Divisional Judicial Magistrate for reconsideration. Thereafter, the impugned order has been passed

3. Background of the case as revealed from the revision petition is that prior to the alleged occurrence petitioners had launched a movement against bus owners of the locality. On account of success of the movement, bus owners, drivers and conductors nurtured grievance against petitioners who took active part in the movement. Of the petitioners some are practising advocates who took part in the movement. On account of this, it is claimed by petitioners that informant who is a bus owner lodged an F.I.R. on false allegations.

4. When cognizance is taken, after receipt of charge sheet, it is difficult to interfere with the same unless some materials are brought out to indicate that accepting entire materials collected by the investigating agency, no case has been made out. That is not the case made out by the petitioners. Besides, after appearance, when charge would be framed against the accused persons, they can agitate the same question for their discharge. Falsity of the offence made out can only be determined at trial.

5. Mr. P. Palit, learned counsel for the petitioners submitted that petitioners have compounded the offence with the informant and accordingly, a direction should be given to the trial Court for compounding the offence on an application being filed to that effect in the trial- Court. Normally,, prayer is reasonable. However, from out of the offences in respect of which cognizance has been taken, some are not compoundable. When the offences are not compoundable no Court has jurisdiction under any provision of Cr. P. C. either to compound the offence or to permit such compounding specially, when, the legislative (mention is that the

offence would not be permitted to be compounded. Parliament in its wisdom has classified (See Section 320) the offence as compoundable without permission of the Court, compoundable with permission of the Court and others not compoundable. Inherent jurisdiction Under Section 482, Cr. P. C. cannot be exercised to defeat the legislative intention.

6. Mr. Palit has relied upon a decision of the Supreme Court reported in AIR 1988 S. C. 2111 (Mahesh Chand and Anr. v. State of Rajasthan) where relying upon an earlier decision as reported in 1987 (2) J. T. 361 (Y. Suresh Sahu v. State of A. P. and another) and after examining the nature of the case and the circumstances under which the offence was committed, it was observed that it may be proper that trial Court shall permit the parties; to compound the offence Under Section 307, I. P. C. which is not compoundable. Accordingly, Supreme Court directed the trial Court to accord permission to compound the offence after giving an opportunity to the parties and after, being satisfied that the compromise agreed upon in 1987 (2) J. T. 361 (supra) prayer was made for leave to compound the offence after conviction of the accused Under Section 326, I.P. C. which is not compoundable. This was accepted by Supreme Court which granted leave to parties to compound subject to payment of Rs. 10,000/- by accused to informant who suffered injury on account of stabbing An overall view of the facts and circumstances was taken.

7. In special cases. Supreme Court may have the power to direct compounding of non-compoundable offence. High Court has no such power and accordingly, I am not inclined to exercise inherent power Under Section 482, Cr. P. C. which would be contrary to the legislative Intent.

8. Non-exercise of inherent power in the present case may result in the accused persons facing a futile trial where parties have settled their differences, outcome of which was the offence alleged. Section 321, Cr. P. C. authorises the State Government to direct the Public Prosecutor to withdraw from the prosecution whether State Government would withdraw from prosecution is within its discretion and no direction can be given to the State Government in exercise of the inherent power or under any of the provisions of the Code. Where, however, such discretion has been exercised arbitrarily to refuse withdrawal in just cases. This

Court in exercise of writ jurisdiction can give direction to the. State Government to reconsider the question. Withdrawal from prosecution is to ,be with leave of the Court where Court grants or refused leave unjustifiably, this Court can interfere with the order of the Court.

9. Mr. H. Kanungo, learned Addl. Government Advocate submitted that State Government had already considered the matter and decided not to direct the Public Prosecutor to withdraw from prosecution. Declining to direct Public Prosecutor Under Section 321, Cr. P. C. for withdrawing from prosecution at one stage does not debar the State Government from considering the question again It is not known whether such consideration was made at a time when parties have settled their disputes. In that view of the matter, I am of the firm view that State Government should consider the question of withdrawal from prosecution afresh if it is satisfied that parties have settled their dispute. Since occurrence is of the year 25th March, 1989 and persons of the legal professions and others are being prosecuted, State Government shall consider the question within six weeks from today and give a direction to the Public Prosecutor Under Section 331, Cr. P.C. if it decides to withdraw from prosecution. Proceeding before learned Magistrate shall remain stayed for six weeks more.

10. With the aforesaid observations, this Criminal Revision is disposed of-.

Revision disposed of.

NOTE

Section 320 of the Code of Criminal Procedure specifies offences which are compoundable by the parties themselves and those which require permission of the Court. Under Clause (9) of Section 320 it is specifically stated 'No offence shall be compounded except as provided by this section'. On consideration of nature and gravity and seriousness of offence and in the interest of the society/community or general public, the legislature has made the classifications and has put the embargo as under Clause (9).

Two decisions of the Supreme Court are often cited in support of the contention of compounding of offence in non-compoundable cases. In these two decisions, the statutory provisions are not discussed and composition of offence has been allowed as described in this judgment. Previous decisions taking the view that such composition is impermissible has not been noticed. Since the judgments are very short, the reason which, weighed with the apex Court cannot be fathomed.

In 1976 Cr. L J. 1221 it was decided that Section 482, Cr. P. C. cannot be invoked for the purpose of circumventing the express provisions under the Code. The Calcutta High Court in 1983 Cr. L, J. 109 has held that no offence can be compounded except as prescribed by Section 320, Cr. P. C. Reference has been made to ASR 1973 SC 84, That was a case in which accused was acquitted on the' ground of compounding of the offence which was non-compoundable. It was held that compounding was invalid in law and the order of acquittal is to be set aside by High Court in exercise of revisional jurisdiction. In that decision reference has been made to another Supreme Court decision in AIR 1962 SC 1738. That decision has illustrated cases where High Court can quash proceedings in exercise of revisional jurisdiction and indicated that High Court should not do indirectly which it could not do so directly. In AIR 1980 SC 1200, permission for compounding was not granted as the offence was non-compoundable. In the case reported in AIS 1)84 SC 1029, an accused convicted for life was acquitted for making gift of some land, but the Supreme Court interfered holding that Court has to dispense justice but not to dispense with justice. In 1982 (3) SCC 371 J) permission was granted on application for permission. But the offence is not mentioned. It might be a case where compounding was permissible. Because, one Judge who was party to this decision Fazal Ali, J is also a party to another decision (1982) 3 SCC 511 (relating to a case Under Section 326, IPC) where it was held that compounding cannot be allowed as the offence is non-compoundable, but considering the peculiar circumstances of the case sentence was reduced. In a decision of a Bench of three Judges reported in AIR 1973 SC 2113 (relating to offence Under Section 326, IPC), it was observed mat in such cases compromise can be taken into consideration for reducing the sentence even if the offence is non-compoundable. A question arose in AIR 1970 Bom. 333 referring to the Schedule of old Code of Criminal Procedure, whether offences

under other laws (other than IPC) can be compounded as those have been provided to be non-compoundable. Chandiachud, J., observed that such offences cannot be compounded as those are barred under law. Reliance was placed in this decision on a judgment of Chagla, C. J. reported in 56 Bom. L. R. 264 which held compounding of non-compoundable offence is invalid.

In the two decisions often cited at the bar AIR1988 SC 2111 and 1987. (2) J.T. 363. no notice has been taken of the previous decisions and no point of law has been discussed. It may not be out of place to mention that Section 321, Cr. P. C. clearly provides for withdrawal of prosecution, so also Court can reduce the sentence in appropriate cases.

In the decision reported in 1988 (II) OLR 400 : (1988) 1 OCR 564 (Md. Khalilur Rahman v. State) the question arose whether composition of the offence Under Section 294, IPC can be permitted inasmuch as the offence is non-compoundable. The offence relates to annoyance of others by obscene acts and songs, recitation or uttering or singing obscene to ballad or words in or near public place. This section comes under the Chapter of offence affecting public health, safety, decency and morals etc. Parliament has amended the section by increasing the punishment with a view to offer severe deterrence, as the offence offends tranquility of society and community. The question of compounding of non-compoundable offence was raised for consideration. But the Court quashed the prosecution case (as stated in para 3 of judgment) on the ground that no benefit or social and public justice would be achieved if the proceeding continues. By the order of quashing compounding of non-compoundable offence has indirectly been allowed to be compounded. Reliance has been placed on four decisions in that case. None of these decisions has any relevance to the question of exercise of jurisdiction to compound. In those cases prosecutions have been quashed for inordinate and unexplainable delay in conducting investigation or framing of charge. Social and public justice means interest of general public and society at large. Public interest means where a class or community have some interest by which legal rights or liabilities are affected. (24 L. J. Q.B. 84 : 1904 (2) K. B. 296: 1906 (2) K. B. 627).

In view of the above position, the following questions arise for consideration :

- (1) Whether Court can permit compounding in non-compoundable; cases ?
- (2) In non-compoundable cases, Court, while refusing to compound can reduce sentence in view of compounding.
- (3) To quash the entire proceeding on the ground that no benefits or social or public justice will be achieved, thereby indirectly allowing compounding of the offence which is non-compoundable.
- (4) Can a Court exercise inherent jurisdiction to indirectly allow composition, though barred Under Section 320(9) specifically ?

Law is well-settled that exercise of inherent jurisdiction is ousted-when there is a specific provision made in the statute. There is another angle to it. Crime is an aberration affecting society, more particularly in those offences where society is nexusially involved. Punishment is intended as a deterrent to others, correctional, reformatory intentions notwithstanding. By exercising inherent jurisdiction to permit composition, public purpose will be affected, and not benefited.

Clear solution on the above aspects is highly necessary and it should be done by the High Court as early as possible. Otherwise the Officers in lower judiciary will have to face difficulties in passing orders.

CHIEF EDITOR

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