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Narender Kumar and Another Vs. State (N.C.T.) of Delhi

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Court : Delhi

Decided On : Aug-16-2001

Reported in : 94(2001)DLT534; 2001(60)DRJ286

Judge : Mr. K.S. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 320, 320(9) and 482; Indian Penal Code (IPC), 1860 - Sections 34, 147, 148, 149, 323, 325, 326, 408 and 452

Appeal No. : Crl. M. (M) 657/2001

Appellant : Narender Kumar and Another

Respondent : State (N.C.T.) of Delhi

Advocate for Def. : Sh. Sunil K.Kapoor, Adv.

Advocate for Pet/Ap. : : Sh. R.M. Tiwari, Adv

Disposition : Petition dismissed

Judgement :
ORDER

K.S.Gupta, J.

1. This petition under section 482 Cr.P.C has been filed alleging that on the complaint made by Narender Kumar, petitioner No.1, FIR No. 25 of 1996 was registered under sections 147/148/149/452/323/34 IPC at PS Dabri Against Dr. Janak Raj Dhami, petitioner No.2 and others.Based on this FIR, chargesheet under sections 147,148,149,452,323,325 and 34 IPC had been filed against the accused. In the occurrence dated 9th January 1996 both the parties had assaulted each other thereby causing injuries to Ved Prakash,Bhuvnesh kumar, Smt. Durga Devi and petitioner No.2. With a view to maintain cordial relations the petitioner No.1 has compromised the matter with petitioner No.2 and he is no more desirous in continuing with the criminal case. It was prayed that said FIR No, 25/96 and criminal proceedings emanating there from pending before Ms Swaranjit Kaur Mehra, Metropolitan Magistrate, New Delhi may be quashed.

2. Along with petition, the affidavits of both the petitioners, Ved Prakash, Bhuvnesh Kumar and Smt.Durga Devi, injured have been filed.

3. Submission advanced by Sh.R.M.Tiwari for petitioners was that as the parties have compromised was that as the parties have compromised the matter no useful purpose would be served by keeping the criminal proceedings against petitioner No.2 and co-accused alive. As part of the submission it was further contended by him that though some of the offences for which chargesheet has been filed, are non-compoundable but that would not affect the power of the court to quash the said FIR and criminal proceedings emanating there from under section 482 cr.P.C.Reliance was placed on the decisions in Haranath Mukherjee and others vs. state 1988 Cri.L.J 23(CAL); Gurcharan Singh vs . State and another, : 74(1998)DLT308 ; Kapil Dev Gupta vs. state & another , 2000 1 AD(delhi) 724 and Naresh Kumar Singh & Anr vs. State , 2000 5 AD (Delhi) 579 Submission is, however, without merit. In the decision in Ram Lal and another vs . State of Jammu & Kashmir , : 1999 CriLJ1342 which was quoted with approval by three Judge Bench in the decision in Surendra Nath Mohanty & Another vs . state of Orissa : 1999 CriLJ3496 , the question of compound ability of non-compoundable offences came to be considered by the Supreme Court and in paras 3 and 4 it was held:-

'3. Section 320 which deals with 'compounding of offences' provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences as are included in the said two tables can be compounded and non else, sub-section (9) of section 320 of the code of Criminal procedure, 1973 imposes a legislative ban in the following terms:-

'(9) No offence shall be compounded except as provided by this section.'

4. It is apparent that when the decision in Mahesh Chand (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in Y.Suresh Babu (supra) drawn. Hence those were decisions rendered perincuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.'

4. Further, in the decision in Madhu Limaye vs . state of Maharashtra : 1978 CriLJ165 while dealing with the principles in relation to exercise of inherent power of the High Court which have been followed ordinarily and generally barring a few exceptions, it was held:-

'(1) That the power is not to be resorted to if there is a specific provision in the code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice:

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the code.'

5. Admittedly, in present case some of the offences for which chargesheet has been filed are non-compoundable and in case quashment of FIR and criminal proceedings emanating there from it allowed on the ground of compromise, it would not only run in the teeth of statutory prohibition contained in sub section (9)

of Section 320 cr.P.C. but will also be in violation of the ratio as at No.3 in the Madhu Limaye's case (supra). Gurcharan Singh, Kapil Dev Gupta and Haranath Mukherjee's cases(supra) are of no assistance to the petitioners. In Naresh Kumar Singh's case (supra) the FIR which came to be quashed, was for an offence under section 408 IPC which is compoundable. Petition thus deserves to be dismissed being without merit.

6. Petition is, thereforee, dismissed.

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