

State Vs. Mohan and ors.

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Court : Rajasthan

Decided On : Jul-05-1967

Reported in : AIR1968Raj79; 1968CriLJ545

Judge : Kan Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 345 and 439; Indian Penal Code (IPC) - Sections 143, 147, 323 and 345(7)

Appeal No. : Criminal Revn. No. 283 of 1966

Appellant : State

Respondent : Mohan and ors.

Advocate for Def. : O.C. Chatterjee, Adv.

Advocate for Pet/Ap. : G.M. Mehta, Dy. Govt. Adv.

Disposition : Revision allowed

Judgement :

ORDER

Kan Singh, J.

1. I have before me a revision application by the State of Rajasthan which is directed against an order of the Judicial First Class Magistrate, Abu Road, dated

5-8-65 by which in a case under Section 323/147 of the Indian Penal Code he recorded an order of acquittal for the offence under Section 323 of the I.P.C. on the basis of a compromise filed by the complainant and the accused non-petitioners and dropped the proceedings so far as the offence under Section 147 of the Indian Penal Code was concerned. The revision raises a short question of law whether in a case where the common object of the unlawful assembly is said to be commission of an offence under Section 323 of the Indian Penal Code and also members of the unlawful assembly are said to have caused hurt in pursuance of the common object of such an assembly and the parties have compromised the offence under Section 323 of the Indian Penal Code, such a compromise will ipso facto embrace the offence under Section 147 of the Indian Penal Code as well, so that the trial court will have to drop the entire proceedings.

2. Now Section 345 of the Code of Criminal Procedure provides that the offences punishable under the Sections of the Indian Penal Code specified in the table appended to Sub-section (1) of that section may be compounded by the persons indicated therein Sub-section (2) of Section 345 of the Code of Criminal Procedure provides that the offences specified in the table appended thereto may be compounded by the persons mentioned therein with the permission of the Court before which any prosecution for such offence was pending. The offence under Section 323 of the Indian Penal Code occurs in the table appended to Sub-section (1) of Section 345 of the Code of Criminal Procedure, but the offence under Section 147 of the Indian Penal Code or for that matter its minor offence under Section 143 of the Indian Penal Code have not been included in any of the tables appended to Sub-section (1) or Sub-section (2) of Section 345 of the Code of Criminal Procedure. Sub-section (6) of Section 345 of the Code of Criminal Procedure provides that the compensation of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded. Sub-section (7) of the section lays down a clear command that no offence shall be compounded except as provided by this section.

Therefore, in order to get the benefit of Section 345 of the Code of Criminal Procedure the party concerned has to show that the offence is included in the table of the offence which have been shown to be compoundable with or without

the permission of the Court. The clear effect of Sub-section (7) is that no offence shall be compounded except as provided by this section. An offence under Section 323 of the Indian Penal Code is not completely identical with an offence under Section 147 of the Indian Penal Code and they, in my view, are distinct and separate offences. Therefore, the mere fact that the parties have compounded the offence under Section 323 of the Indian Penal Code will not necessarily lead to the conclusion that thereby offence under Section 147 of the Indian Penal Code or for that matter one under Section 143 of the Indian Penal Code has also been compounded. The view that in such a situation an offence under Section 147 of the Indian Penal Code or Section 143 of the Indian Penal Code is also compounded will have the effect of enlarging the scope of the offences specified in the tables appended to Sub-sections (1) and (2) of Section 345 of the Code of Criminal Procedure.

In view of the clear provision of Sub-section (7) of Section 345 of the Code of Criminal Procedure it is not, in my opinion permissible to stretch the terms of a particular compromise to cover an offence which is non-compoundable. Now it is the causing of hurt by one person to another that will be an offence under Section 323 of the Indian Penal Code. For holding a person guilty for an offence under Section 147 I.P.C. it is to be shown that he was a member of an unlawful assembly and that unlawful assembly or any member thereof had used force or violence in pursuance of the common object of such assembly. It is to be noted that the force or violence that is contemplated by Section 146 of the Indian Penal Code which defines rioting need not necessarily be used against a human being. Then even if we assume that beating was the common object of the unlawful assembly, the effect of the finding of acquittal for the offence under Section 323 of the Indian Penal Code as a result of compromise is that the member of the assembly concerned did not cause any hurt to anybody. This will not necessarily lead to the position that the person concerned was not even a member of the unlawful assembly or the assemblage did not constitute an unlawful assembly. It is not necessary that any hurt be caused by the unlawful assembly or any of its members to anybody. The mere assemblage of 5 or more persons who have the common object of committing an offence like that under Section 323 of the Indian Penal Code will make out an offence under Section 143 of the Indian Penal Code

against the member thereof, though an offence under Section 323 of the Indian Penal Code may not be made out.

It may be a different matter if for want of evidence the trial Magistrate were to hold that the case could not proceed against any of the accused and so they were to be discharged. In such an eventuality there could be no question of resorting to Section 345 of the Code of Criminal Procedure, The discharge in that event will be based on the merits of the case itself. I am fortified in the view that I am taking by Emperor v. Jarnally, AIR 1925 Lah 464, Crown v. Muhammad Hussain, AIR 1950 Lah 121, Venkanna v. Emperor, AIR 1923 Mad 592 and single bench decision of this Court in State of Rajasthan v. Jamalu, Criminal Revn. No. 286 of 1966 (Raj.). In the Madras case, AIR 1923 Mad 592, it was observed that 'the compounding of one offence does not mean that the offence has not been committed, but that it has been committed, though the victim is willing either to forgive it or to accept some form of solatium as sufficient compensation for what he has suffered.' While I may not go so far as to hold that the compounding of one offence means that the offence has been committed, it is clearly established by this case that the compounding of one offence certainly could not mean that any offence which could not in law be compounded is also thereby compounded. The learned trial Magistrate has in his order referred to a single bench decision of Patna High Court reported as Ramphal Gope v. State of Bihar, 1964 (2) Cri LJ 111 (Pat).

I have gone through that case, but in my view that case does not support the view that has prevailed with the learned Magistrate for dropping the proceedings. In that case the compromise had been put in the trial court and the accused were being prosecuted for offences under Sections 323, 324 and 148 of the Indian Penal Code. The trial court accepted the compromise so far as the offence under Section 323 of the Indian Penal Code was concerned but found them guilty for the offence under Section 147 of the Indian Penal Code. It was observed that the compromise could be given effect to even at the appellate stage. Thus it was in this context that the learned Judge had to consider the question whether the accused could be convicted under Section 147 of the Indian Penal Code. He observed as follows:--

'There now remains the charge under Section 147 Indian Penal Code which is not compoundable. But it appears that the common object of the unlawful assembly was to assault. If the charges under Sections 323 and 323/34 Indian Penal Code fail on account of the compromise, it is obvious that the charge under Section 147 Indian Penal Code must also fail because the common object was to assault. For this reason I am satisfied that the petitioners must be acquitted of all the charges framed against them.'

In my view it does not appear from the report of the case that the attention of the learned Judge was directed to the provisions of Sub-section (7) of Section 345 of the Code of Criminal Procedure which prohibits the compounding of offences otherwise than as provided by the section. Since offences under Section 147 of the Indian Penal Code or for that matter that under Section 143 of the Indian Penal Code have not been included in the category of offences which have been made compoundable with or without the permission of the Court. I do not think the composition should be construed to cover any of such offences. I am inclined to prefer the view that prevailed in Madras and Lahore High Courts as also in this Court.

3. I may add a word regarding one more contention raised by learned counsel for the non-petitioners to the effect that the revision application by the State was not maintainable as the State should have filed an appeal under Section 417 of the Code of Criminal Procedure. The learned Counsel contended that the order of the learned Magistrate which is the subject-matter of the revision was one of acquittal even in respect of the charge under Section 147 of the I. P. C. This contention is wholly without substance. The learned Magistrate has clearly observed regarding the charge under Section 323 of the Indian Penal Code that on the basis of the composition he was acquitting the accused for that charge, but regarding the offence under Section 147 of the Indian Penal Code he only said that he was dropping the proceedings. In other words, he had not passed any order of acquittal. It may also be observed that no charge had been framed against the accused till then. Therefore, in the circumstances the order of the learned Magistrate for dropping the proceedings could only be construed to be an order of discharge and not one of acquittal. The revision application was, therefore,

competent.

4. The result is that I hereby allow this revision application, set aside the order of the learned Magistrate dated 5-8-65 in so far as the offence under Section 147 of the Indian Penal Code was concerned and remand the case to him for proceeding in the matter according to law.

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