

Madarsab and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-04-2011

Judge : Anand Byrareddy

Appeal No. : Criminal Appeal No.854 of 2005

Appellant : Madarsab and Others

Respondent : State of Karnataka

Advocate for Pet/Ap. : For the Appellants: Suresh P. Hudedagaddi, A.C. Purad and R.B. Deshpande, Advocates. For the Respondent: Anand K. Navalgimath, High Court Government Pleader.

Judgement :

The appellants and the complainant-respondent are present before the Court. An application is sought to be filed under Section 320 of the Code of Criminal Procedure to compound the offence, with the permission of the Court.

2. It is stated that the appellant No.1 and the complainant are brothers. Appellant No.2 is the wife of the appellant No.1 and sister-in-law of the Complainant. Appellant Nos.3 and 4 are sons of appellant No. 1 and Complainant is their uncle. Thus, the parties are closely related.

3. The Complainant, however, had lodged a complaint to the Ankalagi Police against the accused for the offences punishable under Section 354, 324, 307 and

504 read with Section 34 of the Indian Penal Code. The Trial Court had convicted the appellants for the aforesaid offences. Being aggrieved by the said judgment, the present appeal is filed.

4. During the pendency of the appeal, the elders of the complainants' village have intervened and have persuaded the appellants and the complainant to resolve their dispute to ensure that there is no further acrimony, and as a first step, to withdraw the criminal case that is pending consideration in this appeal. In that view of the matter, since the present appeal being allowed to reach a logical conclusion would only prolong the dispute between the parties and will create acrimony, as the Complainant is willing to withdraw all the cases against the accused, the present application is filed.

5. At the outset, the learned Government Pleader would raise an objection, that it is the State which prosecutes the proceedings in so far as the complaint is concerned and for the offences punishable under the various sections of the Indian Penal Code. The application is based on a wrong premise to contend that the offence punishable under Section 307 of Indian Penal Code under which the appellants have been convicted, is a compoundable offence. Therefore, he would submit that he is not in a position to be a party to the compromise petition though the complainant and accused might have resolved to settle their dispute. The law does not enable the State to compound a non-compoundable offence. Therefore, he has desisted from affixing his signature to the application.

6. It is in this background, the appellants seeks to persuade this Court to grant permission to compound the offence notwithstanding that one of the offences are punishable under Section 307 of the Indian Penal Code, which is a non-compoundable offence.

7. The learned Counsel for the appellants would submit, that under the facts and circumstances of the case, it is possible for the Court to take a view that even though the offence alleged is non-compoundable offence, permission could be granted to compound the offence in the best interests of the parties and to reduce the litigation before the Courts, which is overloaded, if the circumstances are present to indicate that the offence requires to be compounded, notwithstanding

that the law does not permit. In support of his contention, he would place reliance on the Division Bench judgment of this Court in the case of State of Karnataka Vs. Basavaraju, reported in ILR 1990 Kar 774, which is rendered following the judgment of the Supreme Court in the case of Mahesh Chand and Another Vs. State of Rajasthan, reported in 1990 (Supp) SCC 681.

8. In Mahesh Chand's case, the learned Counsel would point out, that the validity of the conviction under Section 307 of the Indian Penal Code was under challenge, when permission was sought to compound the offence. Interestingly, though the offence punishable under Section 307 of the Indian Penal Code was not a compoundable offence, permission was accorded to compound the offence having regard to the nature and the circumstances of the case and therefore, he submits that the view taken by the Supreme Court would support his case and that the parties be permitted to compound the offence and the learned Government Pleader be directed to affix his signature to the present application.

9. These two authorities would indicate, that it depends on the facts and circumstances of each case, whether the Court can grant such permission even though the offence is a non-compoundable offence. Therefore, in the facts and circumstances of the present case, it is seen that the parties are closely related and that they want to settle their dispute amicably and have come forward to put a quietus to the entire proceedings. The objection raised by the learned Government Pleader is a tenable objection since the law does not permit him to be party without the permission of the Court, to the proceedings to compound the offence.

10. Accordingly, the permission to compound the offence is granted. Hence, as a matter, of formality the learned Government Pleader is directed to affix his signature to the application. In view of the permission having been granted, the application is allowed. The parties are permitted to compound the offence. Accordingly, the judgment of the Court below is set aside. The fine amount shall be paid to the complainant.