

Bineesh Vs. State of Kerala

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Court : Kerala

Decided On : Jun-06-2012

Reported in : 2012(3)KLT51; 2012(2)KHC876; 2012(3)ILR(Ker)57; 2012(3)KLJ94

Judge : C.T. Ravikumar

Appeal No. : Crl.R.P.No.380 of 2012

Appellant : Bineesh

Respondent : State of Kerala

Judgement :

This revision petition has been filed against the judgment of the Court of the Additional District and Sessions (Ad-Hoc) Judge, Mavelikkara in Criminal Appeal No.415 of 2009. There is concurrent verdict of conviction and sentence against the revision petitioners under section 324 of the Indian Penal Code.

2. Pending the revision petition the revision petitioners and the defacto complainant, the person on whom hurt was caused, compromised the case that ultimately led to the conviction and sentence of the revision petitioners. The compromise duly verified by the parties is brought on record by filing Crl.M.A.No.2665 of 2012 which carries the prayer for permission to compound the offence under section 324 IPC.

3. The question is whether the said petition for permission to compound the offence under section 324 IPC is allowable after the coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) from 31.12.2009. If the answer is in the affirmative it would spare a consideration of this revision petition on merits as the composition of the offence will have the effect of an acquittal of the revision petitioners.

4. Certain facts and factors require compendious narration to answer the aforesaid question. Offences which are covered by the Table under sub-section (1) and the Table under sub-section (2), of section 320 of the Cr.P.C. can be compounded by the person specified in third column of the said tables. The offences covered by the Table under sub- section (1) are compoundable without permission of the court and offences covered by the Table under sub-section (2) are compoundable only with the permission of the court. Evidently, offence under section 324 IPC was compoundable with permission of the court till the coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005). Act 25 of 2005 brought in amendment to the Table appended to sub-section (2) of section 320 of Cr.P.C so as to make the offence under section 324 IPC non-compoundable. Though Act 25 of 2005 was published on 23.6.2006 it was to take its effect only from the date of its notification. In this context, the decision of the Hon'ble Apex Court in Mathura Singh and Others v. State of U.P. (2009 (2) KHC 759) assumes relevance. It was decided on 27.4.2009. Taking note of the fact that Act 25 of 2005 was not brought into force by notification, offence under section 324 IPC was held still compoundable, with the permission of the court. Later, it was notified on 31.12.2009. Thus, obviously, the offence under section 324 IPC became non-compoundable on 31.12.2009. But, the point to be decided is whether CrI.M.A.No.2665 of 2012 filed jointly by the revision petitioners and the second respondent to whom hurt was caused, is allowable after the coming into force of Act 25 of 2005 on the ground that the offence under section 324 IPC was committed on 5.11.2007. The learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court in Hirabhai Jhaverbhai v. State of Gujarat and Others ((2010) 6 SCC 688) to canvass the position that the said offence being one committed when the offence under section 324 IPC was compoundable, can still be compounded with the permission of the court. That case was decided by the

Hon'ble Apex Court on 9.4.2010.

5. I have heard the learned counsel for the petitioners, the learned counsel for the second respondent and also the learned Public Prosecutor.

6. The learned counsel for the petitioners laid emphasis, particularly on paragraph 5 of Hirabhai's case (supra) that reads thus:-

"5. This Court finds that after coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 from 23.6.2006 the offence under Section 324 IPC is made non-compoundable. However, in this case the offence under Section 324 IPC was committed on 23.7.1986 on which date it was compoundable with the permission of the court. As the Code of Criminal Procedure (Amendment) Act, 2005 is not applicable to the facts of the case, the offence under Section 324 IPC would be compoundable with the permission of the court."

7. As a general rule, alterations in the form of procedure are retrospective in character in respect of all concerned pending matters unless there is some good reason or other why they should not be. In this case, I do not have to endeavour much on that issue in view of the decisions of the Hon'ble Apex Court in Mathura Singh's case (supra) and Hirabhai's case (supra). It was held in Hirabhai's case (supra) that the amendment brought into section 320(2) of the Cr.P.C. took its effect only from the date of notification. In fact, the Code of Criminal Procedure (Amendment) Act, 2005, (Act 25 of 2005) itself makes it clear that the amendments made thereunder would take effect only from the date of notification. In the decision in Hirabhai's case (supra) the date of commission of offence was 23.7.1986. Paragraph 5 extracted above would reveal that the Hon'ble Apex Court found that after the coming into force of the Code of Criminal Procedure (Amendment) Act, 2005 from 23.6.2006 the offence under section 324 IPC was made non-compoundable. A careful reading of paragraph 14 in Mathura Singh's case (supra) would set at naught the little doubt that may be created with respect to the date of coming into force of Act 25 of 2005.

"14. It requires to be noticed that the Cr.P.C (Amendment) Act, 2005 (Act 25 of 2005) amended S.320 of the Code and in the table under sub-section (2)(a) the

words "voluntarily causing hurt by dangerous weapons or means" in Column 1 and the entries relating thereto in Columns 2 and 3 have been omitted. But the said amendment by Act 25 of 2005 has not yet been brought into force. Therefore, the offence under S.324 IPC is still compoundable with the permission of the Court."

(emphasis supplied)

As noted earlier, Mathura Singh's case (supra) was decided by the Hon'ble Apex court on 27.4.2009. Virtually, the Hon'ble Apex Court in both the aforesaid decisions held that an offence under section 324 IPC committed prior to the coming into force of Act 25 of 2005 would continue to be compoundable with the permission of the court. Act 25 of 2005 itself made it clear that the amendments brought in by that Amendment Act would take its effect only from the date of notification. Moreover, it is obvious from the decision in Hirabhai's case (supra) that the relevant factor deciding whether an offence under section 324 IPC is compoundable or non-compoundable is the date of its commission. The extracted portion of the decision "However, in this case the offence under section 324 IPC was committed on 23.7.1986 on which date it was compoundable with the permission of the court" would undoubtedly suggest that the answer to the question whether an offence under section 324 IPC could be compounded with the permission of the court, would depend upon the answer to the question whether on the date of commission of the offence it was compoundable with the permission of the court. Thus, the cumulative effect of the decisions of the Hon'ble Apex Court referred supra, constrain me to come to the conclusion that despite the coming into force of Act 25 of 2005 with effect from 31.12.2009 an offence under section 324 IPC could be compounded with the permission of the court if the date of commission of the said offence is prior to 31.12.2009. In that view of the matter, the offence in this case being one committed on 5.11.2007, I am of the considered view that the offence under section 324 IPC could be compounded by the second respondent on whom hurt was caused, with the permission of the court.

8. Now, the question whether CrI.M.A.No.2665 of 2012 which carries the prayer for permission to compound the offence is to be allowed or not. The policy of law embodied in section 320 Cr.P.C is to promote friendliness between the parties and

to restore peace between them. In this case, the compromise duly verified by the parties that was brought on record through the said joint application would undoubtedly show that the second respondent, the person on whom hurt was caused, has volunteered to compound the offence with the revision petitioners. I am convinced that no rancour now rests in their hearts and as such, it is a fit case to grant permission to compound the offence. Resultantly, the offence under section 324 IPC against the revision petitioners is compounded and the conviction and sentence against them passed in C.C.No.1140 of 2008 dated 31.8.2009 of the Judicial First Class Magistrate Court-I, Chengannur and confirmed by the judgment in Cri.A.No.415 of 2009 of the Court of the Additional District and Sessions (Ad-Hoc) Judge, Mavelikkara are set aside. The composition of the offence shall have the effect of an acquittal of the revision petitioners with whom the offence has been compounded in terms of sub-section (8) of section 320 of Cr.P.C. The bail bonds, if any, will stand cancelled. If the revision petitioners had deposited any amount pursuant to the order dated 6.3.2012, the same shall be refunded to them on proper application.

The revision petition is disposed of, accordingly.

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