



CHHATTISGARH

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Chhattisgarh

Judgement

Volume - 4



CHHATTISGARH JUDICIAL SERVICES

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[Section 320 of Criminal Procedure Code, 1973]

Compromise in Non-Compoundable Offence can only be a mitigating factor to be considered by a court at the stage of argument on Quantum of Sentence.

Manjit Singh

Versus

The state of Punjab and anr.

Division Bench

Hon'ble R. Banumathi and A.S. Bopanna JJ.

Dated: July 22, 2019.

Delivered by: R. Banumathi, J.

Law point

In a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence.

Facts

On 04.06.2001 at about 05:30 p.m., when complainant-Hardip Singh (PW-1) was returning to his village Baghiari from bus stop on his scooter, Appellant accused, Manjit Singh, along with his brother Ranjit Singh (A2), armed with knife, were attacked/ inflicted knife blows on the left and right thigh of the complainant. On the complaint lodged by the complainant a case was registered under section 307 read with Section 34 I.P.C. and section 324 read with Section 34 I.P.C. After completion of the investigation, the chargesheet was filed against the accused for the aforesaid offences.

Decision of the trial court

Trial Court convicted the Appellant accused and A2 under section 307 I.P.C. and sentenced each of them to undergo rigorous imprisonment for five years along with fine of Rs. 1000/- each for the offence punishable under section

324 I.P.C., they were sentenced to undergo rigorous imprisonment for two years.

The Trial Court acquitted the accused-Davinder Singh giving him benefit of doubt.

Aggrieved by the decision of the Trial Court, the Appellant filed an appeal before High Court.

Decision of the High Court

The High Court acquitted A2 from the charges by giving him benefit of doubt but affirmed the conviction of the Appellant accused which was ordered by the Trial Court and the sentence of imprisonment imposed upon him. The High Court has also enhanced the fine amount from Rs. 1,000 to Rs.50,000/- with a direction to pay the same to the Complainant as compensation.

Being aggrieved, the Appellant accused preferred appeal before the Hon'ble Supreme Court.

During pendency of the appeal, parties compromised the matter and both the counsel i.e counsel for the Appellant accused and complainant, filed affidavit in that regard. The Appellant accused had also filed the compromise deed dated 29th May, 2019 entered into between the parties.

Point of Determination

Whether the compromise between the parties in the case of non compoundable is permissible?

Decision of the Hon'ble Supreme Court

The Hon'ble Supreme Court, after considering the facts and circumstances of the case, held that:

1. Section 307 IPC, is a non-compoundable offence. Thus, No permission can be granted to record the compromise between the parties.
 2. In *Ishwar Singh u. State of Madhya Pradesh*, the Supreme Court of India has held that in a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence.
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3. The Hon'ble Supreme Court, in *Jetha Ram v. State of Rajasthan, Murugesan U. Ganapathy Velar, and Ishwarlal v. State of M.P.*, while taking into account the fact of compromise between the parties, reduced sentence imposed on the Appellant accused to already undergone, though the offences were not compoundable.
4. Therefore, it would not be appropriate to order compounding of an offence not compoundable under the Code by ignoring and keeping aside statutory provisions. However, limited submission of the Appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties was indeed a relevant circumstance which the Court may keep in mind.
5. Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the Appellant accused, the sentence of imprisonment imposed upon the Appellant under sections 307a and 324 IPC. Was reduced from five years/ two years to the period already under
6. The fine amount of Rs.50,000/- imposed upon the Appellant set aside and if already been paid, shall be refunded.

Thus, Appeal was partly allowed.

[Section 439 Criminal Procedure Code, 1973]

Bail Cannot Be Granted Without Assigning Reasons

Mauji ram

Versus

State of uttar pradesh & anr.

Division Bench of Hon'ble Supreme Court

Hon'ble Abhay Manohar Sapre and Indu Malhotra, JJ.

Dated: July 29, 2019.

Delivered by: Abhay Manohar Sapre, J.

Law Point

1. A finding shall be recorded by the Court while granting or rejecting the bail.
2. It may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence, but it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application.

Brief facts

Subhash, Kartar, Sohita, Amarjeet, Soran Bhati, Lili@Mahendra and Ashu @ Ashish after collectively referred to as "Respondents" were facing trial for commission of the offences punishable under sections 147, 148, 149, 302, 120 B, 307, 323, 506 and 427 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC")

These Respondents were apprehended for committing the murder of one Sumit Kumar son of the Appellant - Complainant.

The Respondents (accused persons) after they were apprehended applied for grant of bail before the Sessions Court in the aforementioned trial.

Decision of the trial court and the high court

The Sessions Judge by order dated 20.11.2018, rejected the bail applications of the Respondents.

Aggrieved Respondents filed the bail applications under section 439 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") in the High Court of Allahabad.

The High Court allowed the bail applications and accordingly directed release of the Respondents on bail on their furnishing security and bail bonds to the satisfaction of the Sessions Judge.

Assailing the decision of the High Court, the father of the deceased filed appeals before the Hon'ble Supreme Court, questioning the legality and correctness of the impugned orders. The State also filed a counter affidavit in support of the appeals of the Appellant.

Point of Determination

Whether the High Court was justified in granting bail to the Respondents (accused)?

Observation of the Hon'ble Supreme Court

The Hon'ble Supreme Court opined that:

1. The High Court committed jurisdictional error in passing the impugned order because while passing the impugned order, the High Court did not assign any reason whatsoever as to on what grounds, even though of a prima facie nature, it considered just and proper to grant bail to the Respondents.
 2. In *Ajay Kumar Sharma us. State of U.P. & Ors.*, *10 Lokesh Singh us. State of U.P. & Anr.*, " & *Dataram Singh us. State of U.P. & Anr.*,"? The Apex Court time to time emphasized the need for assigning the reasons while granting bail. Neither the law laid down by the Apex Court, nor the material filed by the prosecution was taken note of by the High Court while considering the grant of bail to the Respondents.
 3. Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution
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as also by the defence at that stage yet it must appear from a perusal of the order that the Court has applied it's mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application.

4. The antecedents of the Respondents which were brought on record by the State in their counter affidavit and the manner in which the offence under section 302 IPC was committed High Court were not taken into consideration the, therefore, failed to observe that it is not a fit case for grant of bail to the Respondents.

Decision of the Hon'ble Supreme Court

After considering the abovesaid observations the Hon'ble Supreme Court held that:

1. The Sessions Judge was right in rejecting the bail applications filed by the Respondents as the case was not a fit case for grant of bail to the Respondents by the High Court.
2. The High Court committed jurisdictional error in passing the impugned order
3. The Respondents in all the appeals were directed to surrender in the concerned Sessions Court for being taken into custody as under trial
4. The Sessions Judge will decide the trial strictly in accordance with law on merits expeditiously.

The appeals were allowed. Impugned orders were set aside. The bail applications filed by the Respondents were dismissed.

[Section 53 of code of criminal procedure, 1973]

DNA Test Cannot Be Ordered Without There Being Appropriate Satisfaction For Its Requirement.

Kathi David Raju

Versus

The State of Andhra Pradesh & anr.

DIVISION BENCH

Hon'ble ashok bhushan and navin sinha JJ.

Dated: August 5, 2019

Delivered by: Ashok Bhushan, K.

Law Point

Police, under section 53 CrPC, is empowered to request the medical examination of the accused when there are reasonable grounds for believing that such examination will afford evidence as to the commission of offence. However, such medical examination of the accused, including DNA test, shall not be ordered without carrying out substantial investigation by police authorities.

Brief facts

Respondent No.2 filed First Information Report dated 06.01.2016 under sections 465, 468, 471 and 420 IPC against the Appellant ie 'Immadabathina Veeranjaneyulu \$/0 Venkata Kotaiah."

The substance of the allegation in the FIR was that:

The Appellant has obtained a fake Scheduled Caste certificate of caste 'Yanadi' whereas he belonged to Telanga caste and on the basis of such caste certificate obtained employment and working as Additional Assistant Engineer in V.T.P.S. Electricity Generation Corporation. The Appellant has changed his name as Kathi David Raju son of Yedulcondalu', Further, two children of the Appellant had also obtained fake caste certificate of 'Yanadi' caste.

On the basis of FIR, the Appellant was arrested on 11.01.2016 and sent for judicial remand. On 13.01.2016, an application was filed before the Additional Junior Civil Judge, Bapatla requesting that the Court may direct conducting of DNA test of the Appellant, the mother of the Appellant and the two brothers of the Appellant.

Decision of the Trial Court

The Additional Junior Civil Judge by order, dated 22.01.2016, directed for conducting DNA test at the request made by the Station House Officer (SHO), Bapatla Town Police Station.

Aggrieved Appellant filed an application under section 482 CrPC, praying for quashing of the order dated 22.01.2016 passed by the Additional Junior Civil Judge.

Decision of the high court

The High Court dismissed the application of the Appellant filed under section 482 CrPC.

Assailing the decision of the High Court, the Appellant filed appeal before the Hon'ble Supreme Court.

Contention of the Appellant

Ld. Counsel for the Appellant contended that:

1. The id. Magistrate committed error in directing for conducting DNA test on insufficient grounds and material, The Investigation Authorities have not completed the investigation and as roving and fishing enquiry, they cannot be permitted to conduct DNA test on the Appellant.
 2. Respondent No.2 claimed to be an office bearer of fake association who due to personal ill- will against the Appellant has lodged FIR questioning the caste certificate of the Appellant.
 3. There is an enactment viz. The Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 under which there is a provision for cancellation of false community certificate, provision of penalty and other relevant provisions.
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4. The FIR lodged by Respondent No.2 was an act of malice and it was with intent to harass the Appellant.

Contention of the respondent

Ld. Counsel appearing for the Respondent submits that:

The police authorities had rightly requested the Court for permitting them to conduct DNA test since the allegations in the FIR have been made that the Appellant is son of 'Venkat Kotaiah' whereas he claimed to be son of 'Yedulcondalu'. Further, section 53 Cr.P.C. empowers the police officer to request for DNA test.

Point of Determination

Whether the High Court was justified in dismissing the application of the Appellant and upholding the decision of the Trial Court ordering DNA Test of Appellant and his family members.

Observations of the Hon'ble Supreme Court

After considering the facts and circumstances of the case, the Hon'ble Supreme Court observed that

1. The order of Additional Junior Civil Judge was recorded as under: The learned APP submitted that the investigation not yet completed and material evidence yet to be collected and also police custody is required to complete the investigation. Further contended that the DNA test in between the accused No.1 and mother of the accused No. 1 along with family members of the accused No. 1 is most required to prove the blood relationship in between the accused NO. 1 and mother of parental relatives of the accused NO. 1. Hence, the learned APP request the court to allow the petition for examine respondent /accused for DNA test."
 2. The police authorities without being satisfied on material collected or conducting substantial investigation have requested for DNA test which is nothing but a step towards roving and fishing enquiry on a person, his mother and brothers
 3. There is no doubt that section 53 CrPC empowers the police authorities to request a medical practitioner to conduct examination of a person which include DNA test.
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4. Without carrying out any substantial investigation, the police authorities had jumped on the conclusion that DNA test should be obtained.
5. It was too early to request for conduct of DNA test without carrying out substantial investigation by the police authorities.
6. The Additional Junior Civil Judge also failed to notice that in the investigation conducted by the Investigating Authority no such materials have been brought on the basis of which it could have been opined that conducting DNA test is necessary for the Appellant on his mother and two brothers.

Decision of the Hon'ble Supreme Court

The Hon'ble Supreme Court, after considering the said observation, held that:

1. The order passed by the Additional Junior Civil Judge dated 22.01.2016 was unsustainable.
2. The High Court committed error in not setting aside the order of the Trial Court in exercise of its inherent jurisdiction under section 482 CrPC.
3. The judgment and order passed by the High Court as well as the order of the Additional Junior Civil Judge dated 22.01.2016 were set-aside.
4. It shall be open for the Court concerned to consider the request for conducting DNA test on there being sufficient materials on record to take any such decision.

The appeal was allowed to the above extent.

[Section 24 (8) of Criminal Procedure, 1973]

The right of victim to assist the court in a trial before the magistrate is not absolute right and depends upon the de.

Amir Hamza Shaikh & ors.

Versus

State of Maharashtra & anr.

Division bench of hon'ble supreme court

Hon'ble I. Nageswara Rao and Hemant Gupta

Dated: 7 august, 2019

Delivered by: Hemant Gupta, J.

Law Point

1. The Magistrate is not bound to grant permission to the victim for assisting trial at mere asking. It is a matter left to the discretion of the Court. This discretion must be used in a judicial manner.
2. There are two types of rights of victims of crime
 - * firstly, the victim's right to participate in criminal proceedings (right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth and
 - * Secondly, the right to seek and receive compensation from the criminal court itself for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

Brief facts

Respondent No. 2 sought permission to conduct prosecution in terms of section 302 of the Code of Criminal Procedure, 1973 for the offence under sections 498A, 406 read with section 34 of Indian Penal Code, 1860.

The learned Magistrate declined permission without giving any reason but the High Court considered the judgments on the subject and granted permission to conduct prosecution only for the reason that the application has been made by an aggrieved party.

Assailing the decision of the High Court the Appellant filed an appeal before the Hon'ble Supreme Court.

Point of determination

Whether the High Court was justified in granting permission to prosecute the offences under sections 498-A, 406 read with section 34 IPC, only for the reason that the application has been made by an aggrieved party?

Decision the Hon'ble Supreme Court

After considering the facts and circumstances of the case, the Hon'ble Supreme Court allowed the appeal and set aside the decision of the High Court as permission granted to the complainant to prosecute the trial was without examining the parameters of the case. The Hon'ble Supreme Court held that:

1. The Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate. The Magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim. On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate.
2. In *Babu v. State of Kerala* 3 1984 CriLJ 499, a Division Bench of Kerala High Court examined as to when permission under section should be granted. The Court held as under:

In *Subhash Chandran v. State of Kerala* 1981 KLT Case No. 125 a learned Judge of this Court held:

Whether permission should be granted or not is a matter left to the discretion of the Court, the discretion being used in a judicial manner. It is true that the petitioner as the son of the deceased and as a person who has a right to make out that there was rashness and negligence on the part of the accused and claim damages from him may be interested in the prosecution. But that fact is not by itself a ground for permitting him to conduct the prosecution in the place of the Assistant Public Prosecutor who is in charge of the case. It is settled law that where a cognizable offence is committed and a prosecution is launched by the State it is for the Public Prosecutor to attend to the prosecution. The object of a criminal prosecution is not to vindicate the grievances of a private person.

3. In *Shiv Kumar v. Hukam Chand & Anr.* the Hon'ble Supreme Court examined the distinction between the scope of section 301 and 302 of the Code. The Hon'ble Supreme Court held that section 302 of the Code is applicable in respect of the offences triable by Magistrate. It enables the Magistrate to permit any person to conduct the prosecution whereas in terms of section 301 of the Code, any private person may instruct a pleader to act under the directions of the Public Prosecutor or Assistant Public Prosecutor in any trial before any court and to submit written arguments after the close of the evidence.
 4. In *J.K. International v. State (Gout. of NCT of Delhi) & Ors.* (2001) 3 SCC 462, the Hon'ble Supreme Court held that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the CrPC.
Further, it is open to the court to consider the request of the victim. If the court thinks that the cause of justice would be served better by granting such permission the court would generally grant such permission. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police.
 5. In *Dhariwal Industries Limited v. Kishore Wadhvani & Ors.* 6 (2016) 10 SCC 378 wherein the learned Magistrate had held that the complainant is not alien to the proceeding and, therefore, he has a right to be heard even at the stage of framing of charge. The High Court modified the order and permitted the counsel engaged by the complainant to act under the directions of the Public Prosecutor in charge of the case. The Apex Court held that when permission is sought to conduct the prosecution by a private person, it is open to the court to consider his request. The Court has proceeded to state that it has to form an opinion that cause of justice would be best sub-served and it is better to grant such permission.
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6. In *Mallikarjun Kodagali (Dead) represented through LRs v. State of Karnataka & Ors.* (2019) 2 SCC 752, three Judge Bench of the Hon'ble Supreme Court considered the victim's right to file an appeal in terms of proviso to Section 372 CrPC and approved the Justice Malimath Committee, wherein the victim's right to participate in the criminal proceedings which includes right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth had been recognised.
7. In 154th Report of the Law Commission of India submitted on August 14, 1996 on Reforms of Criminal Justice System commonly known as the Report of the Justice Malimath Committee, Draft National Policy on Criminal Justice of July, 2007 known as the Professor Madhava Menon Committee and 221st Report of the Law Commission of India, April, 2009, and observed as under:
 - * There are basically two types of rights, which are recognised in continental countries in respect of victims of crime which are as follows: firstly, the victim's right to participate in criminal proceedings (right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth) and
 - * Secondly, the right to seek and receive compensation from the criminal court itself for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

[Section 482 Code of Criminal Procedure, 1873]

FIR Filed after passing an award in Lok Adalat in respect of disputes fully settled is unjust and illegal and not permissible.

Saleem Ahmed

Versus

State & ANR.

Division Bench of Hon'ble Supreme Court

Abhay Manohar Sapre and Subhash Reddy JJ.

Dated: August 19, 2019

Delivered by: Abhay Manohar Sapre, J.

Law Point

FIR after passing of the award by the Lok Adalat was not legally sustainable being against the terms of the award and also for want of any subsisting cause of action arising out of demand.

Brief facts

The Appellant is the owner of the house bearing No. Fil/- 75 (SF), Khasra No. 2271/- 4, Malviya Nagar, Khirkee Extn. New Delhi. The Appellant let out this house to Respondent No. 3 {is} (the game of Ro was deleted from the array of the parties by this Court order dated 25 04 2019) on monthly rent. On 15.12.2014, the officials of the Enforcement Department of BSES Rajdhani Power Ltd. Respondent No. 2 (R2) inspected the electricity meter installed in the aforesaid house and found that the meter was not recording correct readings.

After verification, the BSES made assessment in relation to the consumption of the electricity and accordingly sent a bill for theft for Rs. 97,786/- to the Appellant and R3 because he being In occupation of the house was found consuming the electricity he BSES. The case was accordingly registered against the Appellant and R3.