Yogendra Yadav & Ors vs State Of Jharkhand & Anr on 21 July, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3055, 2014 (9) SCC 653, 2014 AIR SCW 4319, AIR 2015 SC (CRIMINAL) 166, (2014) 142 ALLINDCAS 254 (SC), 2014 (59) OCR 132, (2014) 4 PAT LJR 518, (2014) 4 CRILR(RAJ) 1258, (2014) 4 ALLCRILR 255, (2014) 87 ALLCRIC 239, (2014) 4 JLJR 244, (2015) 1 MH LJ (CRI) 628, 2015 CALCRILR 1 129, 2014 (3) ALLCRIR 2668, 2014 (8) SCALE 634, 2014 (3) RECCRIR 869, (2014) 3 CURCRIR 426, (2014) 8 SCALE 634, (2014) 3 BOMCR(CRI) 690, (2015) 1 ALD(CRL) 240

Bench: N.V. Ramana, Ranjana Prakash Desai

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1205 OF 2014

Yogendra Yadav & Ors. … Appellants

Vs.

The State of Jharkhand & Anr. … Respondents

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellants are original Accused Nos.1 to 3 respectively in P.S. Meharma Case No.155 of 2004 registered under Sections 341, 323, 324, 504 and 307 read with Section 34 of the Indian Penal Code (for short, 'the IPC'). The FIR was lodged on 23/09/1994 by complainant Anil Mandal alleging that the appellants assaulted him and his men on 22/09/2004. On the same day the appellants also filed FIR in respect of the same incident dated 22/09/2004 alleging that complainant Anil Mandal, Baldev Mandal and others assaulted them. This FIR was registered at P.S. Meharma being Case No.156 of 2004 under Sections 147, 148, 149, 448, 341, 323 and 380 of the IPC.

2. In both the cases, after investigation, charge-sheet was submitted. While the cases were going on before the 2nd Additional Sessions Judge,

Godda, both the parties agreed to compromise the cases. A Panchayat was held where with the intervention of the well-wishers a compromise was arrived at. A compromise petition dated 16/11/2011 was signed by both the parties and it was filed in the Court of 2nd Additional Sessions Judge, Godda. An application was filed under Section 231(2) read with Section 311 of the Code of Criminal Procedure, 1973 (for short, 'the Code') being S.C. No. 9/05 for recalling PWs 1 to 6 for further cross-examination on the point of compromise.

3. Learned Additional Sessions Judge by his order dated 16/11/2011 disposed of the said application. Learned Additional Sessions Judge observed that compromise petition was signed by the informant and the injured, their signatures were identified by the lawyers and, therefore, the compromise was genuine. He, however, observed that offences under Sections 324, 341, 323 of the IPC are compoundable with the permission of the court and offences under Sections 326, 307 read with Section 34 of the IPC are non-compoundable. He, therefore, accepted the application in respect of offences under Sections 323, 324 and 341 of the IPC. The said offences were compounded and the accused were acquitted of the same. Prayer for compounding of offences under Sections 326, 307 read with Section 34 of the IPC was rejected. Learned Additional Sessions Judge rejected the application for recalling of witnesses. He directed that the case should proceed against the accused for offences under Sections 326, 307 read with Section 34 of the IPC. This order was challenged by the appellants in the High Court of Jharkhand. By the impugned order the High Court dismissed the challenge, hence, this appeal.

4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the IPC which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab[1]). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In Gian Singh this Court has observed that where the High Court

quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. Needless to say that the above observations are applicable to this Court also.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings.

7. In view of the compromise and in view of the legal position which we have discussed hereinabove, we set aside the impugned order dated 4/7/2012 and quash the proceedings in S.C.No.9/05 pending on the file of 2nd Additional Sessions Judge, Godda. The appeal is disposed of.

……..J
(Ranjana Prakash Desai)

……..J
(N.V. Ramana)

New Delhi;
July 21, 2014.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1498 OF 2014
[Arising out of Special Leave Petition (Crl.) No.8795 of 2012]

Manohar Singh … Appellant

Vs.

State of Madhya Pradesh & Anr. … Respondents

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. The appellant is original Accused No. 3. He was tried along with his father Hukum Singh – original Accused No. 1 and his mother Prem Bai – original Accused No. 2 by the Judicial Magistrate, Dewas (Madhya Pradesh) in Crime Case No. 1680/2009 for offences punishable under Section 498A of the Indian Penal Code (for short, 'the IPC') and Section 4 of the Dowry Prohibition Act, 1961 (for short, 'the Dowry Act'). By judgment and order dated 29/9/2010 learned Magistrate acquitted the appellant and the other two accused. Being aggrieved by this order the State of Madhya Pradesh preferred appeal in the Sessions Court, Dewas being Criminal Appeal No.12/2011. The Sessions Court set aside the order of acquittal and convicted the appellant and two others under Section 498-A of the IPC and sentenced them to undergo two years rigorous imprisonment each and to pay a fine of Rs.500/- each. For offence under Section 4 of the Dowry Act each of them was sentenced to rigorous imprisonment for two years and to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for two months each.

3. Being aggrieved by the said judgment and order, the accused carried criminal revision to the High Court of Madhya Pradesh. The High Court by the impugned order set aside the conviction and sentence of original Accused Nos. 1 and 2 i.e. the father and mother of the appellant. The conviction of the appellant was, however, confirmed. His sentence was reduced to six months and fine of Rs.500/- on each count. Both the substantive sentences were to run concurrently. Being aggrieved by this judgment the appellant filed the present appeal.

4. On 21/1/2013 the appellant sought permission to implead the complainant i.e. his wife Reena as respondent No. 2. A statement was made that the appellant was willing to pay monetary compensation to his wife in lieu of substantive sentence of imprisonment. Permission to implead the complainant-wife Reena was granted. The appellant was directed to deposit Rs.25,000/- as litigation expenses. Respondent No. 2 was permitted to withdraw the said amount unconditionally. Subject to deposit, notice was issued to respondent No. 2 to consider whether the appellant can be asked to pay some suitable monetary compensation to respondent No. 2 in lieu of substantive sentence of imprisonment. On 24/3/2014 counsel for the appellant made a statement that the matter is likely to be settled. We directed respondent No. 2 – wife to remain present in the Court on 28/3/2014. Accordingly on 28/03/2014 she remained present in the Court. She stated that if the appellant pays her Rs.2,50,000/- (Rupees two lacs fifty thousand only) as compensation, she is ready to settle the matter. This Court, therefore, directed the appellant to bring a demand draft of Rs.2,50,000/- in the name of Reena (respondent No. 2). This Court noted that the said demand

draft can be given to her in case after hearing the parties and considering the legal position, this Court permits settlement at this stage.

5. We have heard learned counsel for the appellant, learned counsel for the State of Madhya Pradesh and learned counsel for respondent No. 2. Learned counsel for the appellant and learned counsel for respondent No. 2 have requested the Court to show leniency in view of the settlement. Counsel for the State of Madhya Pradesh has opposed this prayer.

6. Section 498-A of the IPC is non-compoundable. Section 4 of the Dowry Act is also non-compoundable. It is not necessary to state that non- compoundable offences cannot be compounded by a Court. While considering the request for compounding of offences the Court has to strictly follow the mandate of Section 320 of the Code. It is, therefore, not possible to permit compounding of offences under Section 498-A of the IPC and Section 4 of the Dowry Act. However, if there is a genuine compromise between husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if the offences alleged therein are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape etc. (See Gian Singh v. State of Punjab[2]). If the High Court forms an opinion that it is necessary to quash the proceedings to prevent abuse of the process of any court or to secure ends of justice, the High Court can do so. The inherent power of the High Court under Section 482 of the Code is not inhibited by Section 320 of the Code. Needless to say that this Court can also follow such a course.

7. In Narinder Singh v. State of Punjab[3], this Court was dealing with a situation where the accused was charged for offence punishable under Section 307 of the IPC, which is a non-compoundable offence. The parties arrived at a compromise at the stage of recording of evidence. A petition was filed under Section 482 of the Code for quashing of the proceedings in view of the compromise. The High Court refused to quash the proceedings. This Court set aside the High Court's order and quashed the proceedings in view of the compromise. While doing so, this Court laid down certain guidelines. In Guideline No.(VII), this Court considered a situation where a conviction is recorded by the trial court for offence punishable under Section 307 of the IPC and the matter is at appellate stage. This Court observed that in such cases, a mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. This Court observed that in such cases where charge is proved under Section 307 of the IPC and conviction is already recorded of a heinous crime, there was no question of sparing a convict found guilty of such a crime. The observation of this Court must be read obviously in the context of a non-compoundable offence under Section 307 of the IPC. It is trite that a non-compoundable offence cannot be compounded at any stage (See Gyan Singh v. State of Punjab[4]). However, a compoundable offence can be compounded in view of a compromise, if the Court finds it proper to do so even after conviction if the appeal is pending.

8. In this case, the appellant is convicted under Section 498-A of the IPC and sentenced to undergo six months imprisonment. He is convicted under Section 4 of the Dowry Act and sentenced to undergo six months imprisonment. Substantive sentences are to run concurrently. Even though the appellant and respondent No. 2-wife have arrived at a compromise, the order of conviction cannot

be quashed on that ground because the offences involved are non-compoundable. However, in such a situation if the court feels that the parties have a real desire to bury the hatchet in the interest of peace, it can reduce the sentence of the accused to the sentence already undergone. Section 498-A of the IPC does not prescribe any minimum punishment. Section 4 of the Dowry Act prescribes minimum punishment of six months but proviso thereto states that the Court may, for adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than six months. Therefore, sentence of the appellant can be reduced to sentence already undergone by him.

9. Now the question is whether a case for reduction of sentence is made out particularly when the appellant has undergone only seven days sentence out of six months sentence imposed on him. We see no reason why in this case we should not reduce the appellant's sentence to sentence already undergone by him. There can be no doubt about the genuine nature of compromise between the appellant and respondent No.2-wife. The appellant has offered to pay a sum of Rs.2,50,000/- to respondent No.2-wife as compensation. A demand draft drawn in the name of respondent No.2 is brought to the Court. As directed by us even litigation costs of Rs.25,000/- has been deposited by the appellant in the Court. Respondent No.2-wife has appeared in this Court on more than one occasion and requested this Court to take compromise into consideration and pass appropriate orders. Learned counsel for the parties have requested us to take a kindly view of the matter. The affidavit filed by the State of Madhya Pradesh opposing the prayer of the parties does not impress us.

10. We must also note that the trial court had acquitted the appellant. Though the Sessions Court reversed the order and convicted the appellant for two years, the High Court reduced the sentence to six months. The appellant and respondent No.2 were married in 2007. About seven years have gone by. Considering all these circumstances, in the interest of peace and amity, we are of the opinion that the appellant's sentence must be reduced to sentence already undergone by him.

11. In the circumstances, the appeal is partly allowed. The conviction of the appellant under Section 498-A of the IPC and under Section 4 of the Dowry Act is maintained but the sentence awarded to the appellant is reduced to sentence already undergone by him, subject to the condition that the appellant pays a sum of Rs.2,50,000/- (Rupees two lacs fifty thousand only) to respondent No.2-wife as compensation. Impugned order stands modified to the above extent.

12. We must note that a Demand Draft in the sum of Rs.2,50,000/- drawn in the name of respondent No.2 Reena has been handed over to her counsel by learned counsel for the appellant on 18/7/2014.

13. In view of this, bail bond of the appellant, if any, stands discharged.

.....J. (Ranjana Prakash Desai) .....J. (N.V. Ramana) New Delhi;

July 21, 2014.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1169 OF 2014

SATHIYAMOORTHY AND ORS. …Appellants

Versus

STATE REPRESENTED BY THE
INSPECTOR OF POLICE, MADURAI …Respondent

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellants who are original Accused Nos. 1 to 6 respectively were tried in the court of Additional District and Sessions Judge, Madurai in Sessions Case No.444 of 2005 for various offences under the Indian Penal Code (for short, 'the IPC') on the allegation that on 11/11/2004 at about 8.00 p.m. when complainant Ayyanar and his son Murugesan were standing at a common place all the accused came there and formed an unlawful assembly with deadly weapons. Accused No. 2 unlawfully restrained Murugesan. Accused No. 1 attacked complainant-Ayyanar with an iron rod. He also attacked Murugesan with an aruval. Complainant Ayyanar lodged the FIR.

2. After completion of investigation, the accused were sent up for trial. At the trial the prosecution examined 16 witnesses. The accused denied the prosecution case. Learned Additional District and Sessions Judge found Accused Nos. 1 to 6 guilty under Section 148 of the IPC. He sentenced each of them to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each, in default, to undergo two months rigorous imprisonment. Accused No. 1 was found guilty under Section 325 of the IPC and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for three months. Accused No. 2 was found guilty under Section 341 of the IPC and was sentenced to undergo three months rigorous imprisonment and to pay a fine of Rs.200/-, in default, to undergo four weeks rigorous imprisonment. Accused No. 2 was also found guilty under Section 325 read with Section 149 of the IPC and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months. Accused Nos. 3 to 6 were found guilty under Section 325 read with Section 149 of the IPC. Each of them was sentenced to rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each, in default, to undergo

rigorous imprisonment for six months. Substantive sentences were to run concurrently.

3. Being aggrieved by the said conviction and sentence the appellants- accused preferred an appeal to the High Court. By the impugned order the High Court partly allowed the appeal. The order of conviction passed by the trial court was confirmed. However, the sentence imposed under Section 325 of the IPC on Accused No. 1, sentence imposed under Section 325 read with Section 149 of the IPC on Accused No. 2 and sentence imposed under Section 325 read with Section 149 of the IPC on Accused Nos. 3 to 6 was reduced to two years rigorous imprisonment instead of three years rigorous imprisonment. Rest of the order of the trial court was confirmed. Being aggrieved by the judgment and order, the appellants-accused have filed the present appeal.

4. During the pendency of the appeal on 25/04/2014 victim-Murugesan remained present in this Court. He had filed an application for impleadment which was granted. He stated that he would like to compound the offences. That statement was recorded and the matter was adjourned to consider the prayer. An application has been filed by the appellants praying that offences may be permitted to be compounded. It is stated in the application that victim Murugesan and the accused are cousins and they have decided to settle the disputes amicably. It is further stated that pursuant to this decision the accused have paid a reasonable amount to victim Murugesan as per the decision of family elders and they have entered into an amicable settlement in their village much before the accused surrendered as per the orders of this Court. A copy of the statement of victim Murugesan dated 30/9/2012 stating that he has entered into a compromise with the accused is annexed to the application.

5. We have heard learned counsel for the appellants-accused, Mr. Luthra, learned Additional Solicitor General (AC) and learned counsel for the State of Tamil Nadu. They confirmed that parties have entered into a compromise. They submitted that in view of the settlement, this Court may compound the offences as that will accord a quietus to all disputes between the parties. Counsel submitted that the accused and the complainant are cousins. After the compromise they have been staying peacefully in the village. It is in the interest of both sides to bury the hatchet and lead a peaceful life.

6. Offences under Sections 341 and 325 are compoundable. In view of the settlement they can be permitted to be compounded. However, offences under Sections 148 and 149 of the IPC are not compoundable. Hence, permission to compound them cannot be granted. However, since the accused and the victim have entered into a compromise, we feel that it would be in the interest of both sides to reduce the sentence awarded to the accused under Sections 325 and 341 of the IPC to the sentence already undergone.

7. In Ram Lal and anr. v. State of J & K[5] the accused were convicted for offence under Section 326 of the IPC, which is non- compoundable. Looking to the fact that the parties had arrived at a settlement and victim had no grievance, this Court reduced the sentence for the offence under Section 326 to sentence already undergone by the appellants-accused. We are inclined to follow similar course.

8. In the result, the appeal is partly allowed. The offences under Sections 341 and 325 of the IPC, for which the appellants are convicted, are permitted to be compounded because they are compoundable. The appellants are acquitted of the said offences. The appellants are stated to have undergone more than six months imprisonment. So far as offences under Sections 148 and 149 of the IPC are concerned, the conviction of the appellants for the said offences is reduced to the sentence already undergone by them subject to the appellants paying Rs.30,000/- as compensation to victim-Murugesan. Compensation be paid within three months from the date of this judgment.

9. This Court has already released the appellants on bail. In view of this order the bail bonds of the appellants are discharged subject to payment of compensation of Rs.30,000/- as directed by us. If compensation is not paid consequences will follow.

.....J. (Ranjana Prakash Desai) .....J. (N.V. Ramana) New Delhi;

July 21, 2014.

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[1] (2012) 10 SCC 303
[2] (2012) 10 SCC 303
[3] JT 2014 (4) SC 573
[4] (2012) 10 SCC 303
[5] (1999) 2 SCC 213
