Surindra Nath Mohanthy And Anr vs State Of Orissa on 4 May, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2181, 1999 (5) SCC 238, 1999 AIR SCW 2199, 1999 ALLMR(CRI) 2 1267, (1999) 3 SCALE 103, (1999) 3 KER LT 96, 1999 CRILR(SC&MP) 324, 1999 (3) LRI 477, 1999 (4) ADSC 481, 1999 SCC(CRI) 998, 1999 CRIAPPR(SC) 318, 1999 CRILR(SC MAH GUJ) 324, 1999 (2) UJ (SC) 831, 1999 (5) SRJ 412, (1999) 3 JT 408 (SC), (1999) 2 ALLCRILR 415, (2000) 1 KER LJ 3, (1999) 17 OCR 25, (1999) 3 CURCRIR 20, (1999) 4 SUPREME 421, (1999) 25 ALLCRIR 1306, (1999) 38 ALLCRIC 942, (1999) 3 CRIMES 37, (2000) 89 CUT LT 130, (1999) 2 RECCRIR 683, (1999) SC CR R 408, 1999 CHANDLR(CIV&CRI) 55, 1999 CALCRILR 263, (1999) 3 EASTCRIC 304, (2000) 5 BOM CR 99

Bench: M.B. Shah, D.P Mohapatra

```
           CASE NO.:
Appeal (crl.)  497-98 of 1999

PETITIONER:
SURINDRA NATH MOHANTHY AND ANR.

RESPONDENT:
STATE OF ORISSA

DATE OF JUDGMENT: 04/05/1999

BENCH:
K.T, THOMAS & M.B. SHAH & D.P MOHAPATRA

JUDGMENT:
```

JUDGMENT 1999 (2) SCR 1005 The judgment of the Court was delivered by SHAH, J. Leave granted These appeals are filed against the judgment and order dated 5th September, 1997 and 1 Oth November, 1997 passed by the H igh Court of Orissa at Cuttack in Criminal Revision No 436 of 1994 and Miscellaneous Case No. 521 of 1997 whereby Revision Petition against the conviction order and the application for correction, alteration and for compounding offence filed by the appellants were rejected.

The appellants were convicted and sentenced under Section 307, 326, 325, 324 & 323 read with Section 34.I.P.C. and sentenced to 5 years R.I. and fine of Rs. 200 in default of payment of which to undergo R.I. for one month. That Order was challenged before the High Court by filing Criminal Revision No. 436 of 1994. After considering the entire evidence on record, the Court held that from the nature and extent of the injuries sustained by the injured, and also from the manner in which

the car struck against the injured, it was difficult to come to a conclusion that the intention of the accused was to kill the injured and, therefore, it would be hazardous to uphold their conviction under Section 307 I.P.C, After considering the injuries casued to the witness, the High Court altered the conviction of the appellants under Section 326,325, 324 & 323 read with Section 34 I.P.C. and having regard to the facts and circumstances of the case and the affidavit of the witness produced on record, the Court imposed sentence of six month's R.I and fine of Rs. 1,000 in default of payment of which to undergo R.I for further three months for the offence under Section 326 IPC and no separate sentence was imposed on the other counts of offences. Against that order, these appeals are filed by special leave.

It is vehemently contended by the learnd Counsel for the appellants that as the dispute was amicably settled and the matter was compromised, the High Court ought to have granted permission to compound the offences and ought not to have convicted the appellants and imposed the sentence. For this purpose, reliance is placed upon the decisions of this Court in Ram Pujan and Others v State of Uttar Pradesh, [1973] SCC 456 and Mahesh Chandand Anr- v. State of Rajasthan JT, [1988] 1 SCC 618. As against this, learned Counsel for the respondent submitted that the offence under Section 326 is not compoundable and the High Court has rightly rejected the application for compunding the same. He, for this purpose, relied upon the Judgment of this Court in Ram Lai and Anr. v. State ofJ& K, reported in Jt (1999) 1 SC U7 wherein after referring to Section 320 (9) of the Code of Criminal Procedure, the Court observed that the decision in Mahesh Chand (supra) was rendered perincuriam.

In our view, submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub-Section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column No. 3 of the said table. Further sub- Section (2) provides that, the offences mentioned in the table could be compounded by the victim with the permission of the Court. As against this, sub-Section (9) specifically provides that "no offence shall be compounded except as provided by this Section." In view of the aforesaid legislative mandate, only the offences which are covered by table I or 2 as stated above can be compunded and the rest of the offences punishable under Indian Penal Code could not be compounded.

Further, decision in Ram Pujan's case (supra) does not advance the contention raised by the appellants. In the said case, the Court held that major offences for which accused have been convicted were no doubt nori- compoundale, but the fact of compromise can be taken into account in determining the quantum of sentence. In Ram Lai (supra), the Court referred to the decision of this Court in Y. Suresh Babit v. State ofA.P. &Anr.. (1987) 2 JT 361 and to the following observations made by the Supreme Court in Mahesh Chand v. State of Rajasthan, [1990] Suppl. SCC 631 and held as under :-

> "We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and circumstances under which the offence was committed, it may be proper that the

trial court shall permit them to compound the offence."

In the case of Y. Suresh Babu the Court has specifically observed that the said case "shall not be treated as a precedent." The aforesaid two decisions are based on facts and in any set of circumstances,, they can be treated as perincuriam as pointed attention of the court to sub-section (9) of section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326.

We reiterate that the course adopted in Ram Pujan v. State of UP: & Others, and Mahesh Chand & Anr, v, Stateof Rajasthan, (supra) was not in accordance with law. However, considering the fact the parties have settled their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that appellants have already undergone 3 months imprisonment as per the sentence imposed on them,; we think that ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5000 on each of the accused under Section 326 read with section 34 I.P.C. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellant concerned shall undergo simple imprisonment for a furhter period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs. 9,000 also be paid to the injured as compensation.

The Appeals stand disposed of accordingly.