Kishan Chand Vs U.T.

Criminal Miscellaneous No. 3661 of 2009 and Criminal R. No. 512 of 1998 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 3, 2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 320, 320(1), 320(2)#Penal Code, 1860 (IPC) â€" Section 342, 354, 506

Hon'ble Judges: S.S. Saron, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.S. Saron, J.

Crl.M. No. 3661 of 2008

1. The affidavit (Annexure P-1) of Kishan Chand Petitioner and affidavit (Annexure P-2) of Sunita Rani complainant and the joint compromise

deed (Annexure P-3) are taken on record.

It is prayed that the criminal revision petition be disposed of in view of the terms of the joint compromise. The Crl. Misc. petition is being taken up

with the main criminal revision petition.

Crl. R. No. 512 of 1998 (O and M)

2. The Crl. Revision has been filed by the Petitioner Kishan Chand against the order dated 12.5.1998 passed by learned Additional Sessions

Judge, Chandigarh, whereby the appeal of the Petitioner against the order dated 16.5.1995 passed by the learned Judicial Magistrate Ist Class,

Chandigarh has been dismissed and conviction of the Petitioner for the offences u/s 354/342 and 506 Indian Penal Code (for short "IPC") has

been upheld. By the same order dated 12.5.1998 the Crl. Revision filed by the complainant for enhancement of sentence has also been dismissed.

3. F.I.R. for the offences u/s 354/342 and 506 IPC was registered on 25.5.1993 against the Petitioner at Police Station, Sector 39, Chandigarh

on the complaint of Sunita Rani. It was alleged that the Petitioner on 12.5.1993 at about 11.00 a.m. in the area of House No. 2603, Sector 38,

Chandigarh, wrongfully confined the complainant and her younger sister. He used criminal force to outrage the modesty of the complainant and

also criminally intimidated her by threatening to kill her. It was stated by the complainant that she was residing at House No. 2603, Sector 38-C,

Chandigarh along with her parents. On 25.4.1993 her parents had gone to Gujrat. The complainant and her younger sister aged about 5/6 years,

were residing in the house along with her brother Raju and his wife Poonam. On the last Wednesday prior to the Wednesday of the week in

question at about 11 a.m., the complainant and her sister were alone in the house. At that time, the Petitioner who is brother by religion to her

mother came to their house and the complainant asked her maternal uncle (Petitioner) as to whether he would have tea. He, however, declined.

The Petitioner asked the complainant as to who were present in the house. She told him that her brother and sister-in-law had gone out in

connection with some work and she along with her sister were alone at home. The Petitioner then asked the complainant to accompany him to his

house. On refusal of the complainant, he caught hold of her from her arms and pushed her on the bed. Earlier to this he had bolted the door from

inside. The Petitioner then started to outrage the modesty of the complainant. She raised an alaram, but he shut her mouth. Her sister started

weeping. The complainant somehow was able to open the door and the accused ran away after opening of the door. The Petitioner, however,

threatened that in case the complainant informed anyone about the incident, then it would bring bad name to her. In the evening, the complainant

informed her sister-in-law Poonam about the entire incident, who went to the house of the Petitioner. But, he threatened her also. The matter was

not reported to the Police as her parents were not at home and she was advised by persons of her community that the matter should be reported

to the Police on the return of her parents.

4. On these allegations after registering the F.I.R., the Investigating Officer conducted investigations in the case. He went to the place of

occurrence, arrested the accused and charge report (challan) was filed against the Petitioner by the SHO, Police Station, Sector 39, Chandigarh.

The Petitioner was chargesheeted for the offences u/s 354/342 and 506 IPC to which he pleaded not guilt. The learned Judicial Magistrate Ist

Class, Chandigarh after considering the evidence and material on record held the Petitioner guilty for the offences u/s 354/342 and 506 IPC and

convicted him for the same. By a separate order, the Petitioner was sentenced to undergo imprisonment for three months for the offence u/s 342

IPC, imprisonment for one year for the offence u/s 354 IPC and imprisonment for six months for the offence u/s 506 IPC. All the sentences were

ordered to be run concurrently.

5. The Petitioner aggrieved against the order of the trial Court preferred an appeal in the Sessions Court. The complainant also filed a revision

seeking enhancement of the sentence. The learned Additional Sessions Judge, Chandigarh vide order dated 12.5.1998 dismissed the appeal of the

Petitioner. The revision petition filed by the complainant seeking enhancement of sentence was also dismissed.

6. The Petitioner aggrieved against the order of the learned Additional Sessions Judge has filed the present Criminal Revision Petition in this Court.

By an order dated 02.06.1998, the Petitioner was allowed bail during the pendency of the revision petition on his furnishing personal bond in the

sum of Rs. 10,000/- with one surety in the like amount.

7. During the pendency of the revision petition, Criminal Misc. No. 3661 of 2008 has been filed, in which it is stated that the matter has been

compromised between the parties and a joint compromise deed dated 23.12.2008 (Annexure P-3) has been entered into. Petitioner No. 1 has

deposed an affidavit dated 23.12.2008 (Annexure P-1) and the complainant has deposed an affidavit dated 23.12.2008 (Annexure P-2) affirming

the compromise that has been entered into. The complainant is present in the Court and is identified by her counsel. She has filed another affidavit

today, in which she has deposed that she has entered into a compromise and therefore, does not want to proceed with the case. It is also deposed

that the affidavit has been deposed by her without any pressure and with her own understanding. The Petitioner has also stated that she does not

want to proceed with her complaint and the matter be closed.

8. I have given my thoughtful consideration to the entire matter. It may be noticed that the offences for which the Petitioner has been convicted are

under Sections 354, 342 and 506 IPC. Insofar as, the offences under Sections 342 and 506 IPC are concerned, the same in terms of Section 320

(1) of the Code of Criminal Procedure (""Cr.P.C."" -for short) may be compounded by the persons mentioned in the third column of the table below

Section 320 (1) Code of Criminal Procedure In other words, the offence, u/s 342 IPC, regarding wrongfully restraining or confining any person,

may be compounded by the person restrained or confined. Besides the offence u/s 506 IPC relating to criminal intimidation may be compounded

by the person intimidated. Insofar as, the offence u/s 354 IPC is concerned i.e. relating to an assault or criminal force to woman with intent to

outrage her modesty, the same in terms of Section 320 (2) Code of Criminal Procedure as it stood before the Code of Criminal Procedure

(Amendment) Act, 2008 (Act No. 5 of 2009), which received the assent of the President of India on 7.1.2009 and published in the Gazette of

India on 9.1.2009 may be compounded with the permission of the Court, before which a prosecution for such offence is pending by the person

mentioned in the third column of the said table, which in the present case, would be the Petitioner who was assualted and against whom criminal

force was used. The provisions of the Table u/s 320(2) Code of Criminal Procedure have been substituted by the aforementioned Code of

Criminal Procedure (Amendment) Act, 2008 and the offence u/s 354 IPC is now not compoundable. In any case, the same does not affect the

inherent jurisdiction of this Court to quash the complaint where the matter has been compromised. Section 320 Code of Criminal Procedure does

not limit the inherent jurisdiction of the Court to quash the complaint as regards the offence u/s 354 IPC. In fact, it is debateable as to whether the

provisions before the Amendment Act came into force would apply or those after the Amendment Act would apply. However, the said aspect

need not be gone into the present case as the parties have amicably resolved their disputes. The aggreived person in the present case is the

complainant, who is the person, who was assualted and to whom criminal force was used. She has deposed an affidavit that she does not want to

proceed with the case. Besides in terms of a compromise (Annexure P-3) which is signed by seven persons of the locality, it has been stated that

the parties want to live in the same Mohalla and therefore, compromise was arrived at between the parties of their own free will. The compromise

has been reached at so that relations between the two families of party Nos. 1 and 2 remain cordial and there is no strained relations. The

demeanour of the complainant who is present in the Court, suggests that she indeed wants to settle the matter and does not want to hold any

rancour towards anybody. Therefore, in the circumstances, it would be just and expedient that this Court grants necessary permission to

compound the offence in terms of Section 320 (2) Code of Criminal Procedure in sofaras, offence u/s 354 IPC is concerned or in any case

quashes the same in case the same is taken to be not compoundable as the case may be. For the other two offences u/s 342 and 506 IPC, the

same are compoundable by the complainant herself.

9. Keeping in view the aforesaid facts and circumstances, the revision petition is liable to be allowed and the judgment and orders of both the

Courts below are liable to be set aside so that there is peace and amity in the locality and neighborhood and the parties can live with least rancor.

The occurrence of the offence was in the year 1993 and therefore, to put a quietus to the matter it would be just and expedient to allow the

revision petition.

10. Accordingly, Crl. Revision Petition is allowed. The judgment and order of both the Courts below, convicting and sentencing the Petitioner for

the offences u/s 354/342 and 506 IPC is set aside.

Crl. Misc. No. 3661 of 2009 also stands disposed of accordingly.