(2007) 02 SC CK 0098

Supreme Court of India

Case No: Criminal Appeal No. 149 of 2007 (Arising out of S.L.P. (Criminal) No. 3978 of 2006)

Dhananjay @ Dhananjay Kumar Singh		APPELLANT
	Vs	
State of Bihar and Another		RESPONDENT

Date of Decision: Feb. 2, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 239, 320, 320(1), 320(2), 320(9)
- Penal Code, 1860 (IPC) - Section 307, 323, 34, 383, 384

Citation: (2007) 1 ACR 850 : (2007) CriLJ 1440 : (2007) 2 JT 642 : (2007) 2 KLJ 294 : (2007) 2 SCALE 418 : (2007) 2 SCR 206

Hon'ble Judges: S. B. Sinha, J; Markandey Katju, J

Bench: Division Bench

Advocate: Kumar Parimal and P.V. Yogeswaran, for the Appellant; Gopal Singh, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.
Leave granted.

2. This appeal is directed against a judgment and order dated 18.4.2006 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 10432 of 2003, whereby and whereunder a compromise between the parties was not accepted as the appellants were said to be involved in commission of an offence u/s 384 of the Indian Penal Code, 1860.

3. The basic fact of the matter is not in dispute. A written report was lodged on 6.9.2000 by the 2nd respondent herein alleging that on 31.8.2000 at about 5.00 p.m.

some unknown persons had come to his room No. 207 at Jagat Trade center at Fraser Road, Patna and informed him that as a sum of Rs. 1500/- was due to him, he should make the payment thereof. Allegedly, on his reply that he would make the payment only of the amount due from him as per settled accounts; abusive language was used and he was slapped by one Gautam Dubey. A sum of Rs. 1580/- was said to have been taken away from his upper pocket. A First Information Report was lodged on the basis of the said report after six days from the alleged date of commission of the offence. The parties, however, arrived at an amicable settlement of their dispute. A charge-sheet was filed on completion of investigation on 2.2.2001 against the appellant herein purported to be for an offence under Sections 323, 384, 504 read with Section 34 of the Indian Penal Code. An application for discharge was filed by the appellant u/s 239 of the Code of Criminal Procedure, 1973, inter alia, on the premise that the disputes between the parties had been settled. The said application was rejected by the learned Judicial Magistrate on the ground that Section 384 of the Indian Penal Code being non-compoundable, the said application was not sustainable. An application filed by the appellant before the High Court u/s 482 of the Code of Criminal Procedure was dismissed by reason of the impugned judgment, relying on or on the basis of a decision of this Court in 264976 .

4. Submission of Mr. Kumar Parimal, learned Counsel appearing on behalf of the appellant herein was that the High Court committed a manifest error in arriving at the said finding inasmuch as the First Information Report, even if given face value and taken to be correct in its entirety, does not disclose any offence u/s 384 of the Indian Penal Code.

5. Section 384 provides for punishment for extortion. What would be an extortion is provided u/s 383 of the Indian Penal Code in the following terms:

383. Extortion:- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence:

1. The accused must put any person in fear of injury to that person or any other person.

2. The putting of a person in such fear must be intentional.

3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.

4. Such inducement must be done dishonestly.

6. A First Information Report as is well known, must be read in its entirety. It is not in dispute that the parties entered into transactions relating to supply of bags. The fact that some amount was due to the appellant from the First Informant, is not in dispute. The First Information Report itself disclosed that accounts were settled a year prior to the date of incident and the appellant owed a sum of about Rs. 400-500 from Gautam Dubey. According to the said Gautam Dubey, however, a sum of Rs. 1500/-only was due to him. It is in the aforementioned premise the allegations that Gautam Dubey and the appellant slapped the First Informant and took out Rs. 1580/- from his upper pocket must be viewed. No allegation was made that the money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional. The First Informant, admittedly, has also not delivered any property or valuable security to the appellant. A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by over-powering the will of the owner; in commission of an offence of theft the offender''s intention is always to take without that person''s consent.

7. We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case u/s 384 of the Indian Penal Code was made out in the First Information Report. It is true that having regard to the decision of this Court in Bankat (supra) that the Courts would have no power to allow compromise of a prosecution when the same is not permissible in terms of Section 320 of Code of Criminal Procedure. Therein it was held:

In our view, the submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete scheme is provided u/s 320 of the Code. 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 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 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

8. We may, however, notice that in Badrilal v. State of M.P. (2005) 7 SCC 55 a Division Bench of this Court held as under:

A joint petition of compromise has been filed on behalf of the parties in which prayer has been made for recording the compromise. The offence u/s 307 IPC is not a compoundable one, therefore, compromise cannot be recorded, but at the same time it is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased. In the facts and circumstances of the case, we are of the view that

ends of justice should be met in case the sentence of imprisonment awarded against the appellant by the trial court and reduced by the High Court is further reduced to the period already undergone.

9. We need not, having regard to the facts and circumstances, go into the aforementioned contentious issue in the instant case, as we are of the view that no case has been made out for proceeding against the appellant u/s 384 of the Indian Penal Code. In that view of the matter, there was absolutely no reason as to why the settlement arrived at by and between the parties could not have been accepted, as the same would not come within the purview of Sub-section (9) of Section 320 of the Code of Criminal Procedure.

10. For the reasons aforementioned, while quashing the charge framed u/s 384 of the Indian Penal Code, we direct the learned Magistrate to proceed to consider the question in regard to the maintainability of the compromise petition between the parties in accordance with law. The appeal is allowed. No costs.