

S. Ganesan Vs State and Another

Court: Madras High Court

Date of Decision: Nov. 27, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 320
Penal Code, 1860 (IPC) â€” Section 307, 313, 326, 34, 420

Citation: (2013) 1 MLJ(Cri) 443

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: R. Bharanidharan, for the Appellant; R. Prathap Kumar, Government Advocate (Crl. side) and D. Shivakumaran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

The petitioner stood charged for the offences punishable u/s 420, 468 and 471 of IPC and after trial, he was convicted

by the learned Judicial Magistrate No. 1., Namakkal for the offences u/s 420, 468 and 471 of IPC and sentenced him to undergo three years

rigorous imprisonment with fine of Rs. 5,000/-, in default, to undergo simple imprisonment for three months. The conviction and sentence imposed

on the petitioner was also affirmed by the learned Principal District Judge, Namakkal on 30.8.2011 in Crl. A. No. 69 of 2009. As against the

same, the petitioner has come forward with the present Criminal Revision Case. The case of the prosecution is that the petitioner/accused sold the

lorry bearing Registration No. TN 28 M 9090 to the de facto complainant for a sum of Rs. 6,51,000/- by forging the registration certificate and by

tampering the chassis and engine number.

2. The learned counsel for the petitioner submits that he is not arguing the case on merits but confined his argument only on sentence. According to

the counsel for the petitioner, during the pendency of the present Criminal Revision case, the petitioner had entered into an agreement with the de

facto complainant on 29.9.2012 whereby he paid a sum of Rs. 14,00,000/- to the de facto complainant/second respondent herein towards

compensation and the same has also been accepted by the second respondent. The counsel for the petitioner also produced the original agreement

dated 29.9.2012 entered into between the petitioner and the second respondent duly signed by the petitioner and the second respondent in the

presence of witnesses. According to the counsel for the petitioner, the offences for which the petitioner tried is non-compoundable, however, since

the matter has been compromised and the de facto complainant was also paid compensation, he prayed for leniency in reduction of sentence. It is

also submitted that the petitioner had already undergone sentence for a period of 10 days, which is evident from the judgment rendered by the trial

Court and therefore, such sentence already undergone by the petitioner can be treated as sufficient punishment in view of the subsequent

development by which the petitioner and the de facto complainant have entered into a compromise. In this context, the learned counsel for the

petitioner relied on the decisions of the Honourable Supreme Court *Badrilal v. State of Madhya Pradesh* (2005) 7 SCC 55 and *Hasi Mohan*

Barman and Another Vs. State of Assam and Another, wherein it was held that even in case of non-compoundable offence, if the parties to the

dispute settled the matter among themselves, the Court can consider imposing lesser punishment. Therefore, the learned counsel for the petitioner

prayed this Court for imposition of lesser punishment, especially to hold that the period of sentence already undergone by the petitioner is a

sufficient punishment.

3. The learned counsel for the de facto complainant/second respondent would only contend that the matter is settled between the petitioner and the

second respondent by entering into an agreement dated 29.9.2012 and that the de facto complainant/second respondent herein was adequately

compensated.

4. The learned Government Advocate appearing for the first respondent would only contend that the offence for which the petitioner was tried and

sentenced is a non-compoundable offence and therefore, the petitioner has to undergo the sentence.

5. I heard the counsel for both sides. The learned counsel for the petitioner submitted that the petitioner is 50 years old, he has to take care of his

family besides that he is the sole bread winner for his family and therefore he pleaded for leniency in imposition of sentence by holding that the

sentence already undergone by the petitioner shall be treated as sentence for the offence complained of against the petitioner in view of the

subsequent development by which the dispute itself was compromised between the parties.

6. The fact remains that the petitioner was tried for the offence of cheating and fabrication of documents namely registration certificate etc., in the

matter of selling the vehicle-lorry to the de facto complainant/second respondent herein, including tampering of the chassis number and engine

number. Both the Courts below concurrently found the petitioner guilty of the charges and convicted and sentenced him to undergo three years

rigorous imprisonment with fine. The petitioner has paid the fine amount awarded by the Court below. The petitioner also suffered incarceration for

a period of 10 days. The offences for which the petitioner was tried is a non-compoundable offence.

7. Now, it is brought to the notice of this Court that the petitioner and the second respondent have settled the dispute among themselves by

entering into an agreement and that the petitioner had paid a sum of Rs. 14,00,000/- towards compensation to the second respondent/ de facto

complainant. The original agreement has been produced for perusal of this Court, which is evident that the dispute is compromised among the

petitioner and the second respondent on payment of money.

8. In the decision of the Honourable Supreme Court in *Badrilal v. State of Madhya Pradesh* (supra) it was held in para Nos. 3 and 4 as follows:

3. The appellant was convicted by the trial Court u/s 307 read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced to

undergo rigorous imprisonment for a period of ten years. When the matter was taken to the High Court in appeal, the conviction has been upheld,

but the sentence of imprisonment reduced from ten years to six years. Hence, this appeal by Special leave.

4. 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. Similarly, in *Hasi Mohan Burman and Another v. State of Assam and Another* (supra) it was held by the Honourable Supreme Court held in

para No. 7, 8, 9, 10 and 11 as follows:

7. It appears that during the pendency of the case the complainant Haleswari Barman married appellant No. 1 Hasi Mohan Barman and both of

them are living as husband and wife. She filed an affidavit that she had entered into a compromise and wanted the criminal case pending against her

husband Hasi Mohan Barman and the appellant No. 2 Abinash Biswas to be withdrawn as the entire matter had been compromised and both

P.W. 1 and the first appellant were living peacefully as husband and wife. This Court passed an order directing the learned Additional Sessions

Judge to verify the correctness of the affidavit given by P.W. 1 Haleswari Barman. The learned Additional Sessions Judge has sent a report to this

Court that P.W. 1 Haleswari Barman had verified the affidavit given by her and had deposed about the correctness of the same, namely, that she

and Hasi Mohan Barman were living peacefully as husband and wife. In view of this development that P.W. 1 Haleswari Barman and appellant

No. 1 Hasi Mohan Barman have married and are peacefully and happily living as husband and wife it has been submitted that the appeal deserves

to be allowed and the conviction of the appellants should be set aside.

8. Section 320 of Code of Criminal Procedure says that the offences punishable under the Sections of the Indian Penal Code (45 of 1860)

specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. A

perusal of Section 320 will show that the offence u/s 313 IPC is not compoundable. Therefore, the consent given by the wife P.W. 1 or the

affidavit filed by her cannot be utilized for the purpose of recording a finding of acquittal in favour of the accused appellants.

9. There are some decisions of this Court wherein the factor of compromise between the accused and the complainant (or injured or person

aggrieved) has been taken into consideration for reducing the sentence.

10. The first decision on this point was rendered by this Court in Ram Pujan and Others Vs. State of Uttar Pradesh, , wherein the trial Court had

convicted the accused u/s 326 IPC which is a non-compoundable offence and had sentenced the accused to four years R.I. The High Court took

into consideration the compromise between the accused appellant and the injured and reduced the sentence to two years R.I. This Court, after

observing that the fact of compromise can be taken into account in determining the quantum of sentence, reduced the sentence to the period

already undergone which was little more than four months and further imposed a fine of Rs. 1,500/- on each of the appellants. Surendra Nath

Mohanty and Anr Vs. State of Orissa, is a decision of a Bench of three learned Judges. It was observed that in view of the legislative mandate

contained in Section 320 Cr.P.C. an offence can be compounded only in accordance with the provisions of the said Section. The Court followed

the view taken in the case of Ram. Pujan and Others v. State of Uttar Pradesh (supra) and having regard to the fact that the parties had

compromised and a period often years had elapsed from the date of the incident reduced the sentence of five years R.I. imposed under Sections

307 and 326 IPC to the period of sentence already undergone which was three months and also imposed fine of Rs. 5,000/-.

11. There are several other decisions of this Court wherein factor of compromise has been taken into consideration and the sentence has been

reduced mostly to the period already undergone and they are Bankat and Another Vs. State of Maharashtra, Jetha Ram and Others Vs. State of

Rajasthan, .

12. Following the view taken in the above noted cases we are of the opinion that the complainant and the principal accused having already married

it will be in the interest of justice if the sentence is reduced to the period already undergone. The appeal is accordingly partly allowed. The

conviction of the appellants u/s 313 IPC is maintained but the sentence is reduced to the period already undergone which appears to be about ten

months. The fine imposed upon the appellants is also set aside. The appellants are on bail. Their sureties and bail bonds are discharged.

Having regard to the submission of the counsel for both sides and the fact that the de facto complainant/second respondent himself agreed that he

had received a sum of Rs. 14,00,000/- towards compensation from the petitioner by entering into an agreement dated 29.9.2012 and that the

petitioner had already undergone sentence for a period of 10 days, following the decision of the Honourable Supreme Court mentioned supra, this

Court confirms the conviction imposed on the petitioner and reduce the sentence to the period already undergone by him. As far as return of

vehicle is concerned, liberty is given to the petitioner to approach the trial Court.

In the result, the Criminal Revision case is partly allowed.