

Hem Chandra Dutta Vs Girindra Chandra Chaudhury

Court: Calcutta High Court

Date of Decision: July 29, 1920

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 345

Citation: AIR 1921 Cal 403 : 60 Ind. Cas. 797

Hon'ble Judges: N.R. Chatterjea, J; Cuming, J

Bench: Division Bench

Judgement

1. This is a Rule calling upon the District Magistrate and the opposite party to show cause why the proceedings against the petiticee should not be

quashed, or why a farther inquiry should not be made into the petition of compromise.

2. It appears that the opposite party, who is a Pleader of the Thakurgaon Munsif Court in the Dinajpur District, brought a case for defamation

against the petitioner, who is a Muktear's clerk. The parties, however, came to an amicable settlement and a petition of compromise was filed in

the case in the Court of the Sub Divisional Magistrate before whom the case was pending. The petitioner denied that he had defamed the opposite

party and said that, if any such defamatory words had reached the ears of the opposite party, the same were absolutely false, that the petitioner

was sorry for it and tendered his sincere apology to the opposite party, The opposite party stated in the same petition that the accused having

admitted that the defamatory words that he heard were false, and having expressed his regret at the simulation of the false remove and having

apologized in the above manner, he (the opposite party) did not wish to proceed further in the nature and he prayed that the case might be finally

disposed of under the provisions of Section 345, Criminal Procedure Code. The petition was signed not only by the petitioner but also by the

opposite party himself. It was engrossed by his (the opposite party's) clerk, Gopal Chunder Das.

3. After the petition had been filed with the peshkar, the latter put it up before the Sub Divisional Magistrate. Thereupon the Sub Divisional

Magistrate sent for the opposite party, and there was some talk between them as the result of which the Pleader put in another petition by which to

withdraw from the compromise. That has been given effect to, and the case is being proceeded with against the petitioner.

4. We are of opinion that there was a lawful compromise u/s 345, Criminal Procedure Code, which amounted to an acquittal of the petitioner, and

that no further proceedings ought to have been taken against him.

5. Under sub Section (2) of Section 345, certain offenses can be compounded with the permission of the Court before which any prosecution for

such offense is pending, and Clause (5) also provides for composition where the accused has been committed for trial, or where he has been

convicted and an appeal is pending, with the leave of the Court. In the other cases mentioned in Section 345, no leave of the Court is required for

compounding the offence. The offence for which the petitioner was being prosecuted was defamation, u/s 500, and it was compoundable by the

person defamed. The latter agreed and himself signed the petition filed in Court having accepted the apology offered by the petitioner. The offence,

therefore, was lawfully compounded and the Magistrate ought to have directed an acquittal. Instead of doing that, he sent for the Pleader (the

opposite party) and it appears from his report to the District Magistrate that it was he who asked the Pleader to withdraw the petition of

compromise, on the ground that the petition was filed under a misapprehension, the misapprehension being that the Sub-Divisional Magistrate had

not approved of this compromise when he was informed of it by some Pleaders and Muk tears on the morning of that day, whereas the opposite

party was given to understand that the Sub Divisional Magistrate had approved of it.

6. We do not see what the Sub Divisional Magistrate had to do with the composition of the offense u/s 500, it being a private matter between the

Pleader and the Muktear's Mohurir. It is clear that it was after the talk with the Sub-Divisional Magistrate that the Pleader changed his mind.

7. It is said that there was an understanding with the opposite party that the petitioner would offer an apology in open Court, But the petition does

not state that, The petition itself contained expression of apology by the petitioner, and acceptance thereof by the opposite party. That the petition

was signed with knowledge of its contents is not, and cannot be, denied by the opposite party. The subsequent petition of withdrawal shows that

the petition of compromise filed in Court was made by both parties, and it was prayed by the subsequent petition by the opposite party that the

petition of compromise might be rejected.

8. There being no doubt of, the opposite party having signed the petition or of com-promise with knowledge of its contents and of which the Sub-

Divisional Magistrate was satisfied when he sent for the opposite party, as appears from his order, he ought to have acquitted the accused under

the provisions of Section 345, Criminal Procedure Code. See the case of Ktium Bewa v. Bechu Bewa 3 C.W.N. 322,

9. We were referred on behalf of the petitioner, to two cases in the Madras High Court. In the case of Mahomed Kanni v. Pattani Inuyathulla 31

Ind. Cas. 819 : 39 M. 946 "" 2 L.W. 1200 : 18 M.L.T. 602 : 16 Cr. L.J. 803 Abdul Rahim, J., observed as follows: ""A composition arrived at

between the parties of a compoundable offense is complete as soon as it is made, and it has the effect of an acquittal of the accused u/s 345,

Criminal Procedure Code, in respect of that offence, though one of the parties, later or, resiles from the compromise and no statement or petition

recording the compromise is filed in Court by the parties"".

10. See also the case of Kumarasami chetty v. Kuppusami chetty 44 Ind. Cas. 583 : 41 M. 685 : 34 M.L.J. 217 : 7 L.W. 274 : 23 M.L.J. 240 :

19 Cr. L.J. 359 : (1918) M.W.N. 493,

11. It is unnecessary for us to consider the Question whether the compromise of a case outside the Court is a valid compromise and must be given

effect to, when no petition was filed in Court, and this was the question in those two Madras cases. Here the petition was filed in Court and signed

by both parties, and we think it ought to have been given effect to.

12. The result is that further proceedings in the case against the petitioner are quashed and the Magistrate directed to record an order of acquittal

against the petitioner.