
(1914) 10 BOM CK 0007

Bombay High Court

Case No: Criminal Reference No. 58 of 1914

Emperor

APPELLANT

Vs

Gana Krishna Walunj

RESPONDENT

Date of Decision: Oct. 2, 1914

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 345

Citation: AIR 1914 Bom 258 : (1914) 16 BOMLR 939

Hon'ble Judges: Shah, J; Heaton, J

Bench: Division Bench

Judgement

Heaton, J.

In this case, as disposed of by the Magistrate, three persons were convicted of the offence of hurt u/s 323 of the Indian Penal Code. One was sentenced to a fine of Rs. 100, the other two to a fine of Rs. 50 each. The one on whom the appealable sentence was imposed appealed, and the conviction was reversed on the ground that the offence had been compounded. We hold that the Sessions Judge very properly sent the case to us, submitting that the convictions of the accused of the two non-appealable sentences may also be set aside.

2. We have not of course it is not usual to have the explanation of the Magistrate for his proceedings, and in the absence of any explanation I confess I do not understand them and find difficulty in dealing with them. There no doubt whatever that the complainant and the accused put in before Z Magistrate a writing signed by them in which the complainant states that she does not wish to proceed and that the case has been compounded. There is no doubt seeing that this was a case of hurt, that the complainant could compound the case without the permission of the Court But The Court, as I understand it, came to the conclusion that its own permission was needed, that is, unless I have misunderstood the purport of the Magistrate's judgment. He seems have come to this conclusion on the strength of in paragraph 6 of the Resolution of Government in the Judicial Department, No. 7969 of the 4th of

November 1912. It is there stated that Magistrates would also do well to scrutinize requests made to compound offences. Permission to do so should only be accorded when a composition is actually offered by the accused and accepted by the complainant". That advice on the part of Government can only apply to cases where the permission of the Court is needed in order that the case may be compounded. It cannot apply to cases where the person injured is entitled of himself to compound the case. The law on the point is clearly enough laid down in Section 345 of the Code of Criminal Procedure. But the Magistrate thinking that he must take some action of his own called on the parties to prove that the case was that the parties have not even when paper states that the offence is compounded then I seems to me that the parties have not only attempted to but have in fact, proved that the offence is compounded. That was there demonstrated by what followed when the Magistrate refused to treat the case as compounded and went on to take evidence. The complainant said that she had compounded the case and stated later that the facts Ueged in the complaint were not true. That seems to me to be further evidence, if further evidence were needed, that she was determined for her part not to go on with the case against the persons whom she had originally accused. That again is entirely consistent with the view that she had compounded the case. Indeed, how the idea ever entered the Magistrate's mind that the case had not in fact been compounded is another matter which I am unable to understand. It seems to me to be clear beyond any possibility of doubt that the case was compounded in fact. And seeing that it was a case which the complainant could compound without the permission of the Magistrate, it was also compounded in law.

3. Therefore, the convictions of accused Nos. 2 and 3 in this case must be set aside and the fines, if paid, ordered to be refunded.

4. The order as to payment of Court-fees made by the trying Magistrate is also set aside.

Shah, J.

5. I agree. It is clear in this case that the offences with which the accused were charged by the complainant were compoundable and that they were in (act compounded by the person concerned. There being no doubt whatever about the fact of the offences having been compounded, it is clear that under Clause 6 of Section 345 of the Code of Criminal Procedure the accused ought to have been acquitted.