

(1922) 11 BOM CK 0035

Bombay High Court

Case No: None

Matti Venkanna and
eleven Ors.

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 15, 1922

Acts Referred:

- Penal Code, 1860 (IPC) - Section 143, 447

Citation: (1923) ILR (Bom) 257

Hon'ble Judges: Wallace, J

Bench: Single Bench

Judgement

Wallace, J.

The only point raised in this petition is that the conviction under Sections 143 and 447 of the Indian Penal Code was illegal since the offence u/s 447, Indian Penal Code, was compounded.

2. It appears that on 5th July 1920 a compromise petition was put into the lower Court signed by first petitioner (first accused) and prosecution witnesses 1 and 2, prosecution witness 1 being the alleged owner of the field on which the alleged trespass took place. The case was being prosecuted by the police and the compromise petition was rejected by the lower Court as the offence u/s 143 of the Indian Penal Code is not compoundable.

3. The common object charged against the accused as members of the unlawful assembly is the criminal trespass aforesaid. Petitioner contends that since the parties had a legal right to compound that trespass, such a composition has the effect of annulling the common object charged, and therefore the charge u/s 143, Indian Penal Code, falls to the ground.

3. I am not prepared to support this contention. The essence of the offence u/s 143, Indian Penal Code, is the combination of several persons, united in the purpose of

committing a criminal offence, and that consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit. The compounding of one offence does not mean that the offence has not been committed, but that, it has been committed, though the victim is willing either to forgive it or to accept some form of solatium as sufficient compensation for what he has suffered. The law allows prosecuting witness 1 to so deal with the offence of criminal trespass but not with the offence of five or more persons combining to effect that criminal trespass.

4. Petitioner refers me to the ruling quoted in *Sheikh Basiruddi v. Sheikh Kbairat Ali* 17 C.W.N. 948 but that ruling does not say that the composition of the offence of house-trespass and grievous hurt in that case had the effect in law of compounding the offence of being members of unlawful assembly, whose common object was the commission of those offences. It rather implies the opposite.

5. The petitioners' objection therefore fails. I dismiss this petition.