

Andhra High Court

Ghousia Sultana Alias Ghousia ... vs Mohd. Ghouse Baig And Ors., Etc. on 12 February, 1996

Equivalent citations: 1996 (1) ALD Cri 534, 1996 (1) ALT 940, 1996 (1) ALT Cri 608, 1996 CriLJ 2973, II (1996) DMC 115

Author: K Agarwal

Bench: K Agarwal, N S Reddy, V R Reddy

JUDGMENT K.M. Agarwal, J.

1. On the basis of recommendation made by a learned single Judge of this Court, the following question came up for consideration before a Division Bench :

"Whether the High Court can invoke its inherent powers conferred under Section 482, Cr.P.C., and grant permission to the parties to compound the non-compoundable offences, particularly the offence punishable under Section 498-A, I.P.C., to secure ends of justice keeping in view the statutory bar provided under Section 320(9), Cr.P.C. ?"

After considering various case laws and noticing the divergence of judicial opinion, the Division Bench came to the conclusion that :

"The divergence of judicial opinion on the question whether a non-compoundable offence could be allowed to be compounded by the High Court in exercise of its inherent power under Section 482, Cr.P.C., needs to be resolved by a Full Bench as the question arises very frequently."

This is how the matter has come up before this Full Bench.

2. Most of the cases under reference relate to an offence under Section 498-A, I.P.C., but one of them also relates to an offence under Section 409, I.P.C. and yet another relates to some other offences punishable under the provisions of the Negotiable Instruments Act, 1881 and not under the Indian Penal Code. Be that as it may. The nature of offence does not appear to be of any significance for answering the larger question that has been posed before us.

3. Why the learned single Judge considered it necessary to refer the case to a Larger Bench can be gathered from the following facts mentioned by the Division Bench in its order of reference.

"A Division Bench of this Court in Smt. Daggupati Jayalakshmi v. State, 1993 APLJ (Cri) 269 : (1993 Cri LJ 3162), has laid down the proposition that the High Court, in exceptional cases pertaining to matrimonial matters, can grant permission for compounding offences although they are not compoundable under Section 320, Cr.P.C. The Division Bench observed :

"We are of the firm view that in matrimonial cases, that too, in exceptional circumstances where the disputes arose between the wife and husband resulting in filing a complaint and a petition for divorce which ultimately resulted in the form of compromise either for divorce or for re-union, and where some of the sections complained of are compoundable and some non-compoundable, the High Court alone is competent, exercising the inherent power vested in it under Section 482,

Cr.P.C., to permit the parties to compound a non-compoundable offence along with other compoundable offences, after being satisfied with the compromise entered into between the parties. The Magistrate or the Sessions Judge, who are not having inherent powers, have no power to accord permission to compound a non-compoundable offence. The application for compounding a non-compoundable offence can be filed by either of the parties to the compromise before the High Court.

"A learned single Judge of this Court, B. Sudershan Reddy, J in *Annamdevula Srinivasa Rao v. State of A.P.*, 1995 (3) ALD 349 : (1995 Cri LJ 3964), after reviewing the case-law on the subject, has concluded that the High Court "has no power and jurisdiction to direct the subordinate criminal Courts to permit the parties to compound offences, which are otherwise non-compoundable in exercise of the inherent jurisdiction under Section 482, Cr.P.C., and on that view, declared the decision of the Division Bench of *Smt. Gaggupati Jayalakshmi (1993 Cri LJ 3162) (Andh Pra)* (supra) per incuriam and so not a binding precedent. Adverting to the decision of the Supreme Court in *Mahesh Chand v. State of Rajasthan*, , the learned Judge observed that the directions issued by the Supreme Court in that case were traceable to Article 142 of the Constitution of India, which stand on a totally different footing."

Having found so, the referring Division Bench considered various decisions of the Supreme Court dealing with the powers of the High Court under Section 482, Cr.P.C., as also the case of *Mahesh Chand v. State of Rajasthan*, and then expressed its "strong doubts whether the seemingly direct rulings in *Madhu Limaye*, and *Mahesh Chand* (supra) could be said to be still holding the field having regard to the majority judgment of the Supreme Court in *A. R. Antulay v. R. S. Nayak*, , wherein it was laid down that no Court can act contrary to the express provisions of a statute." It also found that :

"Sub-section (9) of Section 320, Cr.P.C. which enjoins that no offence shall be compounded except as provided by that section has not so far come up for judicial interpretation to the extent we could verify the case-law."

It then decided to refer the aforesaid question to a Full Bench. Accordingly these matters have come up before us.

4. To begin with, sub-section (1) of Section 320 of the Code of Criminal Procedure, 1973 enables specified persons to compound certain specified offences punishable under the Indian Penal Code, 1860; and sub-section (2) thereof enables them to compound other specified offences under the Indian Penal Code with the permission of the Court before which any prosecution for such offence is pending. It, therefore, appears that the offences under other enactments cannot be allowed to be compounded by resorting to the provisions of Section 482, Cr.P.C. On the same parity of reasons, but for the provisions of sub-sections (1) and (2) of Section 320, Cr.P.C., it may be said that no offence under the Indian Penal Code could also be compounded with or without the permission of the Court. In this context, if we look to the provisions of sub-section (9) of Section 320, Cr.P.C., which says, "No offence shall be compounded except as provided by this section", it would appear that our conclusion aforesaid is correct. Keeping this in view, let us first see the provisions of Section

482, Cr.P.C., which are as follows :

"482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

5. Though in Mahesh Chand (1989 Cri LJ 121 (SC) (supra), the Supreme Court directed the trial Court to accord permission to compound an offence under Section 307, I.P.C., which was not compoundable, no principle was laid down as to in what cases such permission to compound non-compoundable offences could be given. It was also not a case dealing with the inherent powers of the High Court under Section 482, Cr.P.C. We are, therefore, of the view that this case cannot be a guide in deciding the question referred. In Rajinder Singh v. State (Delhi Admn.), , permission was granted to compound an offence under Section 325, I.P.C., in view of the compromise between the parties, because it was compoundable under Section 320(2), Cr.P.C., but for another offence under Section 452, I.P.C., no permission for compounding the offences was granted, because it was not an offence mentioned either under sub-section (1) or under sub-section (2) of Section 320, Cr.P.C. However, in view of the compromise between the parties, while maintaining the conviction under Section 452, I.P.C., the sentence was reduced to the period undergone. This case also can be of no help for deciding the question before us, because it also does not consider the inherent powers of the High Court under Section 482, Cr.P.C., much less the power to permit compounding of offences not mentioned in Section 320(1) & (2), Cr.P.C. In Madhu Limaye (1978 Cri LJ 165) (supra), the Supreme Court had an occasion to consider the inherent powers of the High Court under Section 482, Cr.P.C. in reference to the bar provided under Section 397(2), Cr.P.C. and it was held :

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

On these principles when we proceed to examine the question, we find that Section 320(9), Cr.P.C. bars compounding of offences except those mentioned in sub-sections (1) & (2) of Section 320, Cr.P.C. We also find that in the circumstances mentioned, if an offence under Section 498-A, I.P.C. is not sought to be pursued by a married woman, steps may be taken for withdrawal of the prosecution in accordance with the provisions of Section 321, Cr.P.C. which reads as follows :

"321. Withdrawal from prosecution. -

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally, or in respect of any one or more of the offences for which he is tried; and, upon

such withdrawal, -

"(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences :"

(Proviso not reproduced) Lastly, exercise of powers under Section 482, Cr.P.C. for permitting compounding of a non-compoundable offence like one under Section 498-A, I.P.C. cannot be equated with the exercise of similar powers with object of preventing abuse of process of any Court. The object of securing the ends of justice may also be achieved by resorting to the provisions of Section 321, Cr.P.C. and we do not think that even in appropriate cases, the Public Prosecutor or Assistant Public Prosecutor in charge of a case would not agree, with the consent of the Court, to withdraw from the prosecution. In *A. R. Antulay v. R. S. Nayak* (1988 Cri LJ 1661) (supra), the Supreme Court considered a case where its earlier order transferring the cases filed against the Chief Minister of the State to the High Court was questioned and finding that the Supreme Court could not, by its directions, confer jurisdiction on the High Court to try any case where it did not possess such jurisdiction under the scheme of the Act under consideration, it was held that (Para 50 of 1988 Cri LJ) :

"... We are of the opinion that this Court (i.e., the Supreme Court) is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 136 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner."

We are of the view that similar circumstances must exist for exercise of inherent powers by the High Court under Section 482, Cr.P.C. Accordingly without going so far of entertaining doubts about the correctness of the principles laid down in *Madhu Limaye* (1978 Cri LJ 165) (SC) (supra), as entertained by the Division Bench referring the question aforesaid to this Full Bench, we may say that even on the basis of the principles laid down in the case of *Madhu Limaye* (supra), no inherent power under section 482, Cr.P.C. with the High Court can be inferred for compounding of an offence which is otherwise not compoundable. We are, therefore, of the view that *B. Sudershan Reddi, J.* was right in saying in *Annamdevula Srinivasa Rao v. State of A.P.*, 1995 (3) A.L.D. 349 : (1995 Cri LJ 3964) that (at pp. 3973-74 of Cri LJ) :-

"The power conferred upon this Court under Section 482, Cr.P.C., is general in nature. The provision protects the inherent jurisdiction of this Court to meet any eventuality not contemplated by the Code of Criminal Procedure to give effect to the orders passed by the Courts and to prevent the abuse of the process of the Court and to pass appropriate orders to meet the ends of justice. Whereas Section 320 of the Code is a special provision dealing with compounding of offences. It

exhaustively deals with as to what are the offences that are compoundable and the manner in which they are to be compounded and further it specifically commands that no other offence other than those mentioned in Section 320 of the Code shall be allowed to be compounded. The effect of compounding of an offence is the acquittal of the accused in the case";

and in holding that "this Court has no power and jurisdiction to direct the subordinate Criminal Courts to permit the parties to compound the offences which are otherwise non-compoundable in exercise of the inherent jurisdiction under Section 482 of the Code of Criminal Procedure."

In *Simrikhia v. Dolley Mukherjee*, , the Supreme Court also observed, though in different context, that (para 2) :

"..... The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code."

6. Accordingly over-ruling the decision of this Court in *Smt. Daggupati Jayalakshmi v. State*, 1993 APLJ (Crl) 269 : (1993 Cri LJ 3162), we answer the question referred to the Full Bench as follows :-

No non-compoundable offence under the Code of Criminal Procedure, 1973 can be allowed, or directed to be compounded by the High Court in exercise of its inherent powers under Section 482, Cr.P.C.

We now direct the office to place the cases before the appropriate Bench for their further disposal in accordance with law.

7. Order accordingly.