CASE NO.:
Appeal (crl.) 1344-1345 of 2004

PETITIONER:
Bankat and Anr.

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 25/11/2004

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Crl.) Nos. 3538-39/2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Bombay High Court, Aurangabad Bench. The appellants who are described as A-1 and A-2 (hereinafter referred to as the 'accused') had questioned correctness of their conviction as recorded by the learned Judicial Magistrate, Ist Class, Osmanabad for offences punishable under Sections 325 and 326 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC').

For offence relatable to Section 326 read with Section 34 IPC each of A-1 to A-3 was sentenced by the learned trial Judge to undergo imprisonment for one year and pay a fine of Rs.500/- with default stipulation. But looking to the age of A-4, he was sentenced to imprisonment for one month and pay a fine of Rs.500/- with default stipulation. No separate sentence was passed for the offence punishable under Section 325 read with Section 34 IPC.

By the impugned judgment, the High Court held that A-3 was not responsible for the injury on the leg of victim Ratnabai (PW-2) and on the head of the victim Manik (PW-1) and taking note of the long passage of time the custodial sentence was reduced to the period already undergone. However, the fine was enhanced to Rs.2,000/- For Pandurang Mohan Aade (A-4) also, looking to his age fine was enhanced to Rs.2,000/- but custodial sentence was reduced to period already undergone. So far as the present appellants are concerned it was held that there is no scope for interference with the sentence awarded. In other words, the conviction was maintained for all the four accused persons but different sentences were imposed.

The benefit of Bombay Probation of Offenders Act (in short the 'Probation Act') was not extended to the appellants looking into the nature of the offence committed.

After disposal of the revision application on 11.12.2003, an application was filed stating that the matter has been compromised between the victims and the accused persons and, therefore, the order should be modified. The said application was rejected by the learned Single Judge holding that there is no scope for modification of the order after disposal of the revision application.

Though in support of the appeals, many points were urged on the

factual aspects, we find that the Courts below have concurrently found that the accused persons were responsible for injuries on the victims Ratnabai and Manik and, therefore, in view of the evidence of the eye-witnesses, more particularly, the injured witnesses there is no scope for interference with the conclusions arrived at.

It was next submitted by learned counsel for the appellants that occurrence took place on 1.3.1993 and more than a decade has elapsed and in the meantime the parties have sorted out their differences, entered into compromise and, therefore, the High Court should have accepted the prayer for modification of the order.

It was further submitted that though the offence under Section 326 is not compoundable in terms of Section 320 (9) of the Code of Criminal Procedure, 1973 (in short the 'Code') this Court can exercise jurisdiction under Article 142 of the Constitution of India, 1950 (in short the 'Constitution') and pass necessary orders. It was submitted that the benefit extended to the other co-accused persons should be made available to the appellants and the custodial sentence should have been reduced to the period already undergone.

It is vehemently contended by the learned counsel for the appellants that as the dispute was amicably settled and the matter was compromised, the High Court ought to have granted permission to compound the offences and ought not to have convicted the appellants and imposed the sentence. For this purpose, reliance is placed upon the decisions of this Court in Ram Pujan v. State of U.P (1973 (2) SCC 456) and Mahesh Chand v. State Rajasthan (1990 Supp SCC 681). As against this, learned counsel for the respondent submitted that the offence under Section 326 IPC is not compoundable and the High Court has rightly rejected the application for compounding the same. He, for this purpose, relied upon the judgment of this Court in Ram Lal v. State of J&K (1999 (2) SCC 213) wherein after referring to Section 320 (9) of the Code the Court observed that the decision in Mahesh Chand's case (supra) was rendered per incuriam.

In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the IPC, a complete scheme is provided under Section 320 of the Code. Sub-section (1) of Section 320 provides that the offences mentioned in the Table provided thereunder can be compounded by the persons mentioned in column 3 of the said Table. Further, sub-section (2) provides that the offences mentioned in the Table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under the IPC could not be compounded.

Further, the decision in Ram Pujan's case (supra) does not advance the contention raised by the appellants. In the said case, the Court held that the major offences for which the accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. In Ram Lal's case (supra) the Court referred to the decision of this Court in Y. Suresh Babu v. State of A.P.(JT (1987) 2 SC 361) and to the following observations made by the Supreme Court in Mahesh Chand's case (supra) and held as under : (SCC p. 682, para 3)

"3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence."

In the case of Y. Suresh Babu's (supra) the Court has specifically observed that the said case "shall not be treated as a precedent". The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to sub-section (9) of Section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326.

We reiterate that the course adopted in Ram Pujan's case (supra) and Mahesh Chand's case (supra) was not in accordance with law. The above position was elaborately indicated by a three-Judge Bench of this Court in Surendra Nath Mohanty and Anr. vs. State of Orissa (1999 (5) SCC 238).

However, considering the fact that the parties have settled their dispute outside the court, the fact that 10 years have elapsed from the date of the incident, and the further fact that the appellants have already undergone several months' imprisonment, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5000/- on each of the accused under Section 326 read with Section 34 IPC. In default of payment of fine, the appellants concerned shall undergo imprisonment for a further period of six months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs. 4000/- also be paid to each of the injured as compensation.

The appeals stand disposed of accordingly.