

Ram Lal

Vs

State of Jammu & Kashmir

Criminal Appeal No. 70 of 1999

(K. T. Thomas, M. B. Shah JJ)

25.01.1999

JUDGMENT

K.T. Thomas, J

1. Leave granted.

2. The first appellant Ram Lal stands convicted of the offence under Section 326 of the IPC and is undergoing a sentence of three years. The second appellant has been convicted of Section 324 of the IPC and was sentenced to imprisonment for two years. The parties have comprised and a petition for compounding has been filed. We cannot accede to the request for compounding in regard to the offence under Section 326 IPC as the same is a non-compoundable offence. Sri D.D. Thakur, Senior Counsel invited our attention to the decisions of this Court in *Y. Suresh Babu v. State of A.P. and another, 1987(2) JT 361* and *Mahesh Chand and another v. State of Rajasthan, 1990 SCC (Suppl.) 681* wherein non-compoundable offences were allowed to be compounded. In *Y. Suresh Babu (supra)* it was specifically observed that the said case "shall not be treated as a precedent". In the latter case (*Mahesh Chand*) offence under Section 307 IPC was permitted to be compounded with the following observations :

"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 circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence."

We are unable to follow the said decision as a binding precedent. Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the Court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-Section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms :

"(9) No offence shall be compounded except as provided by this section."

It is apparent that when the decision of *Mahesh Chand (supra)* was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in *Y. Suresh Babu (supra)* drawn. Hence those were decisions rendered

*per incuriam*. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded. However, considering the fact that parties have come to a settlement and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith. Regarding the second appellant we permit the parties to compound the offence (section 324 IPC) in view of the joint application filed by the legal representatives of the deceased complainant and the second appellant (vide his application No. CrI. M.P. No. 7648/98). In view of the aforesaid compounding of the offence under Section 324 of IPC we set aside the conviction and sentence passed on the second appellant and he is acquitted under Section 320(8) of the Code of Criminal Procedure, 1973.

The appeal is disposed of accordingly.