

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SMT. JUSTICE ANURADHA SHUKLA**

ON THE 13th OF JULY, 2023

CRIMINAL APPEAL No. 3874 of 2016

BETWEEN:-

**BASHAR KAMAAL S/O KAMALUDIN QURESHI, AGED ABOUT 50
YEARS, R/O H. NO. 57, SIKANDARY SARAY, PS STATION
BAJARIYA, DISTRICT BHOPAL (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI OMSHANKAR PANDEY - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH P.S. G.R.P.
BHOPAL, DISTRICT BHOPAL (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI VINOD TIWARI - PANEL LAWYER)

.....
Reserved on : 04.07.2023.

Pronounced on : 13.07.2023.
.....

This appeal coming on for admission this day, the court passed the following:

JUDGMENT

The present criminal appeal has arisen out of the judgment passed by Special Judge, Bhopal in Special Case No.76/2015 on 08.12.2016. The appellant was convicted by that judgment for offences punishable under Section 354A of IPC and Section 8 of POCSO Act and was sentenced to undergo rigorous imprisonment for 03 years with a fine amount of Rs.5000/-, with default stipulation for the offence of Section 8 of POCSO Act

2. This appeal was admitted on 26.12.2016 and the appellant was enlarged on bail by suspending the sentence awarded to him under the impugned judgment. During the pendency of this appeal, a compromise was reached between the parties and applications under Section 320(5) of Cr.P.C., Section 320(2) of Cr.P.C. and Section 320(1) of Cr.P.C. were respectively filed vide I.A.Nos.6025/2022, 6028/2022 and 13276/2022. By the order dated 14.06.2022, the parties were directed to remain personally present before the Registrar (Judicial-II) on 14.07.2022 for verification of compromise reached between them. On 14.07.2022, the compromise was verified and the statements of prosecutrix were recorded. The verification report along with the statements of prosecutrix in sealed cover were sent to the Court.

3. The facts of the case are that the prosecutrix, whose date of birth was 10.04.2004, was sexually assaulted while traveling in the train. At the time of the incident, she had completed the age of only 11 years. The appellant convicted in the case is a Railway Employee. In the application submitted under Section 320(5) of Cr.P.C., it is prayed by the father of the prosecutrix to allow the permission to compound the offence but during verification of compromise, it was found that prosecutrix has herself completed the age of 18 years and being a major person she is competent to compromise on her own.

4. The verification report submitted by the learned Registrar (Judicial-II) reveals that the parties have arrived at the compromise on their free will and volition and without there being any threat or any inducement from the appellant for settling the dispute. It is mentioned in the verification report that on account of amicable settlement between the parties, the dispute now stands fully and finally resolved. The father of victim was also inquired on this point and he too conveyed the voluntariness of settlement.

5. Looking to the facts mentioned in verification dated 14.07.2022, it is established that the parties have compromised the lis. Now the substantial question of

law which arises for decision is whether the compromise arrived at between the parties can be recorded in offences of Section 354A of IPC and Section 8 of POCSO Act, which are non-compoundable in nature.

6. On this legal aspect, the appellant has relied upon the decisions in the cases of *Surat Singh Vs. State of Uttaranchal (now Uttarakhand) and another (Criminal Appeal No.2022/2012)* and *Shiji @ Pappu and others Vs. Radhika and another (Criminal Appeal No.2094/2011)* decided by Hon'ble Supreme Court. He has also placed reliance on the decision of Chhattisgarh High Court in the case of *Neelam Khatri and others Vs. State of Chhattisgarh (Criminal Appeal No.660/2022)* and the decision of M.P. High Court in the case of *Amit Kewat Vs. State of M.P. in M.Cr.C.No.60949/2022*. The judgment of Hon'ble the Apex Court in *Shiji @ Pappu and others Vs. Radhika and another* has outlined the principle that while hearing an appeal against conviction, the High Court may not be competent to permit compounding of an offence, where the nature of offence is non-compoundable under Section 320 of Cr.P.C., but the High Court may quash the proceeding in such cases. It is held that the inherent powers under Section 482 of Cr.P.C. are not for that purpose controlled by Section 320 of Cr.P.C.. Further it has been principally laid down in the case of *Popular Muthiah Vs. State of Tamil Nadu, 2006 (5) Supreme 210*, that the inherent power as envisaged in Section 482 of Cr.P.C. can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

7. In the light of above settled legal position, the power under Section 482 of Cr.P.C. needs to be invoked here because the offences proved against the appellant are non-compoundable in nature but the peculiar facts and circumstances of the case show that the offence committed was not of substantial gravity and the cases decided by Hon'ble the Apex Court cited above relate to the similar kind of offence wherein

compromise was allowed in non-compoundable offence.

8. In the light of aforesaid facts of the case and the settled legal position, this Court is of the considered view that negation of compromise would lead to denial of complete justice and it may not only create rift between the parties but would also cause a life time stigma to the appellant as well as his generations to come. Since there is no statutory embargo against invoking the power of Section 482 of Cr.P.C. after conviction, it appears to be a fit case to invoke the inherent jurisdiction and acquit the appellant of the charges.

9 . Accordingly, in the light of compromise, the impugned judgment of conviction and sentence passed under Section 354A of IPC and Section 8 of POCSO Act is hereby set-aside. Appellant is on bail. His bail bond shall stand discharged forthwith. Fine amount, if any, deposited by him shall be refunded to the appellant.

10. Accordingly, the appeal stands **allowed** and **disposed of**.

Office is directed to send the copy of this judgment alongwith the record to the trial Court concerned for information and compliance.

Nitesh

(ANURADHA SHUKLA)
JUDGE