



# ODISHA

Judicial Services Exam

CIVIL JUDGE CADRE

Odisha Public Service Commission

**Judgement**

**Volume - 4**



# ODISHA JUDICIAL SERVICES

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5.	Saleem ahmed Versus State & anr.	Section 482 Code of Criminal Procedure, 1873  FIR Filed after Passing an award in Lok Adalat in respect of disputes fully settled is unjustand illegal and not permissible.	August 19, 2019
6.	P.chidambaram  Versus  Directorate of	(Note to readers though at the end anticipatory bail was not granted in the	5 <sup>th</sup> September 2019

	Enforcement	favour of appellant matter being dismissed as infructuous but read the case carefully to articulate the court craft done the by appellants lawyer - hence this brief is drafted exhaustively)	
7.	P.chidambaram Versus Directorate of Enforcement	Regular Application Section CrP.C Bail 439 (before This reading read His Anticipatory Bail brief for clarity in flow of facts	5 <sup>th</sup> September 2019
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## [Section 320 of Criminal Procedure Code, 1973]

**Compromise in Non-Compoundable Offence can only be a mitigating factor to be considered by a court at the stage of argument on Quantum of Sentence.**

Manjit Singh

Versus

The state of Punjab and anr.

### **Division Bench**

Hon'ble R. Banumathi and A.S. Bopanna JJ.

**Dated:** July 22, 2019.

**Delivered by:** R. Banumathi, J.

### **Law point**

In a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence.

### **Facts**

On 04.06.2001 at about 05:30 p.m., when complainant-Hardip Singh (PW-1) was returning to his village Baghiari from bus stop on his scooter, Appellant accused, Manjit Singh, along with his brother Ranjit Singh (A2), armed with knife, were attacked/ inflicted knife blows on the left and right thigh of the complainant. On the complaint lodged by the complainant a case was registered under section 307 read with Section 34 I.P.C. and section 324 read with Section 34 I.P.C. After completion of the investigation, the chargesheet was filed against the accused for the aforesaid offences.

### **Decision of the trial court**

Trial Court convicted the Appellant accused and A2 under section 307 I.P.C. and sentenced each of them to undergo rigorous imprisonment for five years along with fine of Rs. 1000/- each for the offence punishable under section

324 I.P.C., they were sentenced to undergo rigorous imprisonment for two years.

The Trial Court acquitted the accused-Davinder Singh giving him benefit of doubt.

Aggrieved by the decision of the Trial Court, the Appellant filed an appeal before High Court.

### **Decision of the High Court**

The High Court acquitted A2 from the charges by giving him benefit of doubt but affirmed the conviction of the Appellant accused which was ordered by the Trial Court and the sentence of imprisonment imposed upon him. The High Court has also enhanced the fine amount from Rs. 1,000 to Rs.50,000/- with a direction to pay the same to the Complainant as compensation.

Being aggrieved, the Appellant accused preferred appeal before the Hon'ble Supreme Court.

During pendency of the appeal, parties compromised the matter and both the counsel i.e counsel for the Appellant accused and complainant, filed affidavit in that regard. The Appellant accused had also filed the compromise deed dated 29th May, 2019 entered into between the parties.

### **Point of Determination**

Whether the compromise between the parties in the case of non compoundable is permissible?

### **Decision of the Hon'ble Supreme Court**

The Hon'ble Supreme Court, after considering the facts and circumstances of the case, held that:

1. Section 307 IPC, is a non-compoundable offence. Thus, No permission can be granted to record the compromise between the parties.
2. In *Ishwar Singh u. State of Madhya Pradesh*, the Supreme Court of India has held that in a non-compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence.

3. The Hon'ble Supreme Court, in *Jetha Ram v. State of Rajasthan, Murugesan U. Ganapathy Velar, and Ishwarlal v. State of M.P.*, while taking into account the fact of compromise between the parties, reduced sentence imposed on the Appellant accused to already undergone, though the offences were not compoundable.
4. Therefore, it would not be appropriate to order compounding of an offence not compoundable under the Code by ignoring and keeping aside statutory provisions. However, limited submission of the Appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties was indeed a relevant circumstance which the Court may keep in mind.
5. Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the Appellant accused, the sentence of imprisonment imposed upon the Appellant under sections 307a and 324 IPC. Was reduced from five years/ two years to the period already under
6. The fine amount of Rs.50,000/- imposed upon the Appellant set aside and if already been paid, shall be refunded.

Thus, Appeal was partly allowed.

## [Section 439 Criminal Procedure Code, 1973]

### **Bail Cannot Be Granted Without Assigning Reasons**

Mauji ram

Versus

State of uttar pradesh & anr.

#### **Division Bench of Hon'ble Supreme Court**

Hon'ble Abhay Manohar Sapre and Indu Malhotra, JJ.

**Dated:** July 29, 2019.

**Delivered by:** Abhay Manohar Sapre, J.

#### **Law Point**

1. A finding shall be recorded by the Court while granting or rejecting the bail.
2. It may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence, but it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application.

#### **Brief facts**

Subhash, Kartar, Sohita, Amarjeet, Soran Bhati, Lilu@Mahendra and Ashu @ Ashish after collectively referred to as "Respondents" were facing trial for commission of the offences punishable under sections 147, 148, 149, 302, 120 B, 307, 323, 506 and 427 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC")

These Respondents were apprehended for committing the murder of one Sumit Kumar son of the Appellant - Complainant.

The Respondents (accused persons) after they were apprehended applied for grant of bail before the Sessions Court in the aforementioned trial.

## **Decision of the trial court and the high court**

The Sessions Judge by order dated 20.11.2018, rejected the bail applications of the Respondents.

Aggrieved Respondents filed the bail applications under section 439 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") in the High Court of Allahabad.

The High Court allowed the bail applications and accordingly directed release of the Respondents on bail on their furnishing security and bail bonds to the satisfaction of the Sessions Judge.

Assailing the decision of the High Court, the father of the deceased filed appeals before the Hon'ble Supreme Court, questioning the legality and correctness of the impugned orders. The State also filed a counter affidavit in support of the appeals of the Appellant.

### **Point of Determination**

Whether the High Court was justified in granting bail to the Respondents (accused)?

### **Observation of the Hon'ble Supreme Court**

The Hon'ble Supreme Court opined that:

1. The High Court committed jurisdictional error in passing the impugned order because while passing the impugned order, the High Court did not assign any reason whatsoever as to on what grounds, even though of a prima facie nature, it considered just and proper to grant bail to the Respondents.
2. In *Ajay Kumar Sharma us. State of U.P. & Ors.*, *10 Lokesh Singh us. State of U.P. & Anr.*, " & *Dataram Singh us. State of U.P. & Anr.*,"? The Apex Court time to time emphasized the need for assigning the reasons while granting bail. Neither the law laid down by the Apex Court, nor the material filed by the prosecution was taken note of by the High Court while considering the grant of bail to the Respondents.
3. Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution

as also by the defence at that stage yet it must appear from a perusal of the order that the Court has applied it's mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application.

4. The antecedents of the Respondents which were brought on record by the State in their counter affidavit and the manner in which the offence under section 302 IPC was committed High Court were not taken into consideration the, therefore, failed to observe that it is not a fit case for grant of bail to the Respondents.

### **Decision of the Hon'ble Supreme Court**

After considering the abovesaid observations the Hon'ble Supreme Court held that:

1. The Sessions Judge was right in rejecting the bail applications filed by the Respondents as the case was not a fit case for grant of bail to the Respondents by the High Court.
2. The High Court committed jurisdictional error in passing the impugned order
3. The Respondents in all the appeals were directed to surrender in the concerned Sessions Court for being taken into custody as under trial
4. The Sessions Judge will decide the trial strictly in accordance with law on merits expeditiously.

The appeals were allowed. Impugned orders were set aside. The bail applications filed by the Respondents were dismissed.



## [Section 53 of code of criminal procedure, 1973]

### **DNA Test Cannot Be Ordered Without There Being Appropriate Satisfaction For Its Requirement.**

Kathi David Raju

Versus

The State of Andhra Pradesh & anr.

#### **DIVISION BENCH**

Hon'ble ashok bhushan and navin sinha JJ.

**Dated:** August 5, 2019

**Delivered by:** Ashok Bhushan, K.

#### **Law Point**

Police, under section 53 CrPC, is empowered to request the medical examination of the accused when there are reasonable grounds for believing that such examination will afford evidence as to the commission of offence. However, such medical examination of the accused, including DNA test, shall not be ordered without carrying out substantial investigation by police authorities.

#### **Brief facts**

Respondent No.2 filed First Information Report dated 06.01.2016 under sections 465, 468, 471 and 420 IPC against the Appellant ie 'Immadabathina Veeranjaneyulu \$/0 Venkata Kotaiah."

The substance of the allegation in the FIR was that:

The Appellant has obtained a fake Scheduled Caste certificate of caste 'Yanadi' whereas he belonged to Telanga caste and on the basis of such caste certificate obtained employment and working as Additional Assistant Engineer in V.T.P.S. Electricity Generation Corporation. The Appellant has changed his name as Kathi David Raju son of Yedulcondalu', Further, two children of the Appellant had also obtained fake caste certificate of 'Yanadi' caste.



On the basis of FIR, the Appellant was arrested on 11.01.2016 and sent for judicial remand. On 13.01.2016, an application was filed before the Additional Junior Civil Judge, Bapatla requesting that the Court may direct conducting of DNA test of the Appellant, the mother of the Appellant and the two brothers of the Appellant.

### **Decision of the Trial Court**

The Additional Junior Civil Judge by order, dated 22.01.2016, directed for conducting DNA test at the request made by the Station House Officer (SHO), Bapatla Town Police Station.

Aggrieved Appellant filed an application under section 482 CrPC, praying for quashing of the order dated 22.01.2016 passed by the Additional Junior Civil Judge.

### **Decision of the high court**

The High Court dismissed the application of the Appellant filed under section 482 CrPC.

Assailing the decision of the High Court, the Appellant filed appeal before the Hon'ble Supreme Court.

### **Contention of the Appellant**

Ld. Counsel for the Appellant contended that:

1. The id. Magistrate committed error in directing for conducting DNA test on insufficient grounds and material, The Investigation Authorities have not completed the investigation and as roving and fishing enquiry, they cannot be permitted to conduct DNA test on the Appellant.
2. Respondent No.2 claimed to be an office bearer of fake association who due to personal ill- will against the Appellant has lodged FIR questioning the caste certificate of the Appellant.
3. There is an enactment viz. The Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 under which there is a provision for cancellation of false community certificate, provision of penalty and other relevant provisions.

4. The FIR lodged by Respondent No.2 was an act of malice and it was with intent to harass the Appellant.

### **Contention of the respondent**

Ld. Counsel appearing for the Respondent submits that:

The police authorities had rightly requested the Court for permitting them to conduct DNA test since the allegations in the FIR have been made that the Appellant is son of 'Venkat Kotaiah' whereas he claimed to be son of 'Yedulcondalu'. Further, section 53 Cr.P.C. empowers the police officer to request for DNA test.

### **Point of Determination**

Whether the High Court was justified in dismissing the application of the Appellant and upholding the decision of the Trial Court ordering DNA Test of Appellant and his family members.

### **Observations of the Hon'ble Supreme Court**

After considering the facts and circumstances of the case, the Hon'ble Supreme Court observed that

1. The order of Additional Junior Civil Judge was recorded as under: The learned APP submitted that the investigation not yet completed and material evidence yet to be collected and also police custody is required to complete the investigation. Further contended that the DNA test in between the accused No.1 and mother of the accused No. 1 along with family members of the accused No. 1 is most required to prove the blood relationship in between the accused NO. 1 and mother of parental relatives of the accused NO. 1. Hence, the learned APP request the court to allow the petition for examine respondent /accused for DNA test."
2. The police authorities without being satisfied on material collected or conducting substantial investigation have requested for DNA test which is nothing but a step towards roving and fishing enquiry on a person, his mother and brothers
3. There is no doubt that section 53 CrPC empowers the police authorities to request a medical practitioner to conduct examination of a person which include DNA test.