

## CRIMINAL REVISION.

Before Edgley J.

BABUR ALI SARDAR

v.

KALA CHAND BEPARI\*.

1939

Feb. 9.

*Compounding of offences—When should it be permitted by High Court in revision—Code of Criminal Procedure (Act V of 1898), ss. 345, sub-s. (5A), 435, 439.*

The jurisdiction of the High Court to allow an offence to be compounded under s. 345, sub-s. (5A) of the Code of Criminal Procedure is not limited to cases in which the High Court has called for the record of the case under s. 435 of the Code on account of some alleged illegality or impropriety in an order made by an inferior criminal Court.

In suitable cases the High Court may allow the parties to a criminal case to compromise their disputes, even when such compromise is effected after the date of the final disposal of the case by the inferior Court competent to try it. The power to allow offences to be compounded given to the High Court under s. 345 (5A) of the Code is discretionary and should be sparingly exercised.

Under s. 345, sub-s. (5A) of the Code, an offence can ordinarily be compounded only at the instance of the victim of the offence. It is not competent for the High Court to allow a compromise to be recorded under this sub-section unless the aggrieved person is actually before the High Court and has expressly recorded his consent to a compromise being recorded.

The High Court will not ordinarily allow the compromise of an offence to be recorded under s. 345, sub-s. (5A) of the Code unless some attempt towards compounding the offence was made before the trial Court passed orders in the case.

### CRIMINAL REVISION ON BEHALF OF THE ACCUSED.

This Rule was issued at the instance of the accused petitioner to show cause why the conviction should not be set aside and the offence compounded.

The petitioners were convicted under s. 323, Indian Penal Code, for voluntarily causing hurt to

\*Criminal Revision, No. 63 of 1939, against the order of N. C. Basu, Additional Sessions Judge of Dacca, dated Nov. 9, 1938, confirming the order of H. N. Bose, Magistrate, First Class, at Narayanganj, dated Aug. 15, 1938.

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complainant and his sons and each of the petitioners was fined Rs. 30, and in default to suffer rigorous imprisonment for six weeks; there was also an order for compensation of Rs. 10 to each of the opposite parties out of the fines if realised. The other material facts appear from the judgment.

*Nirmal Chandra Das Gupta* for the petitioner. The powers of the High Court under s. 439 of the Criminal Procedure Code, 1898, are very wide and are not confined to cases where the records have been called for by the High Court. Section 435 of the Code uses the words "or otherwise comes to its (High Court's) knowledge". Section 345, sub-s. (5A) was introduced by the legislature to encourage the compounding of petty offences. It also refers to s. 439 of the Code and this shows that the provisions of s. 345, sub-s. (5A) and s. 439 of the Code are independent of each other. The prayer for compounding of offences usually comes from the accused and the clause "persons by whom the offence may be compounded" in column 3 of sub-s. (1) of s. 345 of the Code only indicates that no compounding can be ordered without the consent of the persons mentioned under the clause. I submit that under these circumstances compounding of the offence ought to be allowed.

*Nausher Ali* for the Crown. Section 345, sub-s. (5A) does not apply where there is no indication that the offence was sought to be compounded when the case was before the lower Courts. Admittedly there is no such indication in the present case. At the instance of the complainant and with his consent alone the offence can be compounded. There being nothing on the records to show that the conviction is illegal or improper or that the complainant consented to the compounding of the offence, the application ought to be rejected and the Rule should be discharged.

*Santosh Kumar Basu, amicus curiæ.* Even if no application was presented before either of the Courts below for permission to compound the offence, s. 439 of the Code enables the High Court to allow such a composition in revision. Ordinarily, the High Court exercises its powers in revision only when the records are before it and under s. 435 of the Code, the records of a case can be called for by the High Court if the action of an inferior Court is illegal, incorrect or improper. This seems to indicate that if no application for composition had been made before the inferior Court, the High Court could not send for the records to allow a composition here, if there are no other grounds in the case for interfering with the conviction. Sub-section (5A) of s. 345, however, mentions the revisional powers of the High Court under s. 439 of the Code and these are not altogether dependent upon s. 435 of the Code. Under s. 439, the High Court can exercise its revisional powers not only in those cases in which it has sent for the records under s. 435 or which have been reported to it for orders under s. 438, but also in those cases which otherwise come to its knowledge. Furthermore, an illegal or incorrect order of an inferior Court passed on an application for composition could always be revised under ss. 435 and 439 of the Code.

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Sub-section (5A) was added to s. 345 of the Code by the amendment of 1923 to enable the High Court to allow composition for the first time in revision.

The High Court can allow composition of an offence on a petition presented by the accused person, if the person who can compound the offence as shown in the third column of sub-s. (1) and sub-s. (2) of s. 345 is served with notice of the petition and does not appear and object to the composition.

A complainant will seldom take the trouble of coming up to the High Court and of initiating the proceedings even if the expense is borne by the accused as a term of the compromise.

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EDGLEY J. In this case the petitioners were convicted by Mr. H. N. Bose, Deputy Magistrate of Narayanganj, on August 15, 1938, in respect of offences under s. 323 of the Indian Penal Code and were sentenced to pay fines of Rs. 30 each or in default to undergo rigorous imprisonment for six weeks.

On November 9, 1938, the learned Additional Sessions Judge of Dacca was asked to refer this case to the High Court on the ground of certain alleged illegalities in the order of the trial Court, but he declined to do so. This Court was then moved in revision on January 19, 1939. The main ground urged in support of the petitioners' application was to the effect that the dispute between the petitioners and the complainant had been compromised. A Rule was, therefore, issued upon the District Magistrate of Dacca and the complainant to show cause why the order of the trial Court should not be set aside on the ground that, even although there was no suggestion that the case should be compromised before the Courts below before they recorded their orders of the 15th August and the 9th November respectively, it was nevertheless competent for the High Court to allow the parties to compromise the case and to acquit the petitioners, having regard to the provisions of s. 345(5A) of the Code of Criminal Procedure. In this connection, it may be mentioned that the allegation in the petition before this Court with regard to the compromise is to the effect that this compromise was made on November 15, 1938, that is, six days after the petitioners' application in revision had been rejected by the learned Additional Sessions Judge of Dacca.

The first point for consideration in connection with this case is whether or not this Court has jurisdiction under s. 345(5A) of the Code of Criminal Procedure to allow the parties to compromise a dispute of this nature, although there was no proposal before either of the Courts below to the

effect that any such compromise should be made. With regard to this question, it has been argued that the matter has come before this Court in its revisional jurisdiction by reason of this Court having sent for the record in the exercise of its powers under s. 435 of the Code of Criminal Procedure. Section 435 empowers this Court to call for and examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceeding of such inferior Court. In the case with which we are now dealing it is quite clear that the orders passed by the Courts below contained no illegality or irregularity with reference to the suggested compromise, inasmuch as no question with regard to any such compromise was ever raised before either of the Courts while they had seisin of the case. It has, therefore, been suggested that, in these circumstances, this Court can have no jurisdiction to modify the order of the trial Court under s. 439 of the Code of Criminal Procedure. At the same time, it is clear from the language of s. 439 of the Code of Criminal Procedure read with s. 345(5A) of the Code that this Court can, in certain circumstances, allow a compromise to be recorded in the exercise of its revisional jurisdiction in the case of any proceeding the record of which has been called for by itself or which has been reported for orders or which otherwise comes to its knowledge. The language of s. 439 is very wide and it does not limit the jurisdiction of this Court to interfere in revision merely in cases in which this Court has called for the record of a case on the ground of some alleged illegality or impropriety in the order made by an inferior criminal Court. In the case with which we are now dealing it is, therefore, suggested that this Court is competent to record the compromise, having regard to the provisions of s. 345(5A) of the Code of Criminal Procedure, even although there is no impropriety in the order of either of the Courts below and although neither the trial Court nor the learned

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Judge, while they were still in seisin of the case, rejected any proposal to the effect that the case should be compromised. With this contention I am inclined to agree and I think that one of the objects of the legislature in enacting sub-s. (5A) of s. 345 of the Code of Criminal Procedure was, in suitable circumstances, to allow the parties in such cases to compromise their disputes even after the cases in which they were concerned had been heard and determined by the Courts competent to try them.

At the same time, sub-s. (5A) of s. 345 of the Code is a section which should be interpreted very strictly and with regard to which, in my view, the discretion which has been conferred upon the High Court should be exercised sparingly and only in suitable cases. The sub-section in question reads as follows :—

A High Court acting in the exercise of its powers of revision under s. 439 may allow any person to compound any offence which he is competent to compound under this section.

This sub-section must be read subject to the preceding sub-sections of s. 345 of the Code, especially sub-ss. (1) and (2). These sub-sections, in col. 3 of the tables annexed thereto, set forth lists of persons by whom the offences in col. 1 may be compounded. In other words, the persons mentioned in col. 3 of these tables are the persons competent to compound the offences mentioned in col. 1. It follows, therefore, that sub-s. (5A) of s. 345 of the Code merely confers jurisdiction on the High Court in the exercise of its powers of revision under s. 439 of the Code to allow the aggrieved persons mentioned in col. 3 of the tables attached to sub-ss. (1) and (2) to compound the various offences mentioned in those sub-sections. This section, however, does not empower the High Court to allow a convicted person to compromise an offence in the absence of the complainant or aggrieved person mentioned in sub-ss. (1) and (2). It would follow, therefore, that ordinarily the party who seeks to invoke the jurisdiction of this Court under sub-s. (5A) of s. 345 of the Code of Criminal Procedure

must be the person aggrieved by the offence which has been committed and not an accused person or a person who has been convicted in respect of that offence. In any event, it would, in my opinion, not be competent for this Court to allow a compromise to be recorded under sub-s. (5A) of s. 345 of the Code of Criminal Procedure, unless the aggrieved persons were actually before this Court and had expressly recorded their consent to such a compromise being recorded.

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In the case with which we are now dealing the complainant is not before this Court. The Rule was issued upon the application of the convicted person and, although it would appear that a copy of the Rule was served upon the complainant, it is impossible from this fact alone to infer that the complainant wishes to invoke the jurisdiction of this Court for the purpose of recording a compromise under s. 345 (5A) of the Code of Criminal Procedure. In any event, in a case such as that which is now before me, I do not think that the jurisdiction of this Court should be used for the purpose of allowing a compromise to be recorded. It is clear from the record of the case that there was no suggestion that any compromise should be made until six days after the learned Additional Sessions Judge had rejected the petitioners' application for revision and I do not think that, where the proceedings before the Courts below disclose no irregularity or impropriety, the exceptional power which has been conferred upon this Court by sub-s. (5A) of s. 345 should ordinarily be used except in a case in which the record indicates that the parties made some attempt to compromise their differences while the matter was still before the trial Court and before that Court passed final orders in the case.

Having regard to the considerations set forth above this Rule must be discharged.

*Rule discharged.*