

NARAYANAN
SINGH
v.
AIYASAMI
REDDI.

that the value of the suit is the value of the entire property claimed by the plaintiff.

We dismiss the Letters Patent Appeal with costs.

S.V.

SERHAGIRI
AYYAR AND
NAPIER, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Tyabji.

1915.
July 30 and
August 19.

*Re S. RANGAYYA AND THREE OTHERS (ACCUSED), PETITIONER.**

Criminal Procedure Code (Act V of 1898), sec. 439, criminal revision under—Compounding of offences—Incompetency of High Court to sanction composition, in revision—Criminal Procedure Code (Act V of 1898), sec. 345, exhaustive.

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The High Court sitting as a Court of revision has no power to sanction the compounding of offences mentioned in section 345, Criminal Procedure Code, which is exhaustive of the Courts which can sanction the composition of offences and the stages at which the composition can be effected.

Emperor v. Ram Piyari (1909) LL.R., 32 All., 153, dissented from.

PETITIONS under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the convictions and sentences passed by A. FOTHERINGHAM, the Joint Magistrate of Bezwada, in Calendar Cases Nos. 77 and 84 and 118 and 119 of 1914 and Criminal Miscellaneous Petitions filed by all the petitioners in the above two Criminal Revision Petitions praying for sanction to give effect to the compromise entered into by both parties.

The facts of the case appear from the order of TYABJI, J.

E. B. Osborne, T. Ramachandra Rao and G. Venkataramayya for the petitioners.

Nugent Grant, the Acting Public Prosecutor for the Crown.

TYABJI, J.

TYABJI, J.—The first point involved in this revision case is whether the desire of the parties to compound the offence of causing grievous hurt punishable under section 325 of the Indian Penal Code can affect our decision. The point arises in a case where two brothers brought a charge and countercharge against each other for causing grievous hurt and rioting and each of them was sentenced by the Joint Magistrate to one month's

* Criminal Revision Cases Nos. 3 and 28 of 1915 (Criminal Revision Petitions Nos. 1 and 24 of 1915).

rigorous imprisonment. From these sentences they could not appeal but they have applied in revision and are now desirous of compounding.

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The composition of offences is dealt with in section 345 of the Criminal Procedure Code. Sub-section (1) specifies the offences which may be compounded without leave of Court by the injured person. It contains no reference to the stage at which the proceedings may be.

Sub-section (2) provides that the offence of causing grievous hurt may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

Sub-sections (3) and (4) extend the sphere of composition by permitting it, (a) in the cases of abetments of and attempts to commit the offences that may be compounded, and (b) by permitting guardians of minors, etc., to compound.

Sub-section (5) refers to cases where a person has been committed to trial or where he has been convicted and he has appealed, in either of which cases it is provided that no composition for the offence shall be allowed without the leave of the Court concerned.

Sub-section (6) gives to a composition the effect of an acquittal.

Sub-section (7) disallows composition except as provided by the section.

The section therefore contains provisions with regard to (a) the persons who may compound, (b) the nature of the offences that may be compounded, (c) the stage of the criminal proceedings at which composition is sought to be made; (d) it also provides that in regard to some offences the mere consent of the injured person shall not suffice for composition; he must obtain the permission of the Court, the Courts being specified whose permission to compound has to be obtained. Sub-section (7) must therefore be taken to mean that no offence shall be compounded except where the provisions of section 345 are satisfied as to each of these four matters. The section mentions the Court before which the prosecution is pending, to which the accused is committed for trial and before which an appeal is pending. There is no reference to the High Court in its revisional powers. Conversely it is noteworthy that section 439 (which defines the

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powers and functions of the High Court in revision) does not refer to section 345.

TYABJI, J.

It would therefore seem that if an offence were allowed to be compounded when the matter is pending before the High Court in revision, it could not be said that the composition was as provided by section 345 in two respects, (1) as to the stage of the proceedings, (2) as to the Court which, it is provided by the section, must give leave. It follows that the offence cannot now be compounded.

It was argued before us that we are empowered (sitting in revision) to allow the composition to be made by reason of section 423 (1) (d) read with section 439 (1). For this argument it is contended that the giving of leave to compound is merely a consequential or incidental order—a contention that was accepted in *Emperor v. Ram Piyari*(1) but rejected in *Emperor v. Ram Chandra*(2). KNOX, J., who decided the latter case, sitting alone, was a party to the earlier decision also but his attention was not drawn to it and he does not notice it.

In connection with this argument I observe that the Code in no place specifically empowers any Court to give permission to compound; nowhere is there any special provision conferring distinct powers to sanction compositions. In section 345 (2) the permission of the Court is referred to as a condition precedent to the act of the parties having any effect; and in section 345 (5) the absence of such permission is mentioned as depriving the composition of any effect; but in each case it is assumed that the Court has power to give permission provided there is any occasion for granting permission.

The point of view from which the sub-sections are drafted is, however, that it is the injured person who has to be empowered to compromise and difficulty in the way of compromise in revision is in my opinion not so much that the revision Court has not been specifically authorized to grant permission, but that the parties are not allowed to compound except at the stages when the prosecution is pending, or the accused has been committed for trial, or an appeal is being heard from a conviction. The absence of any power being given to the injured person to

(1) (1909) I.L.R., 32 All., 153.

(2) (1914) I.L.R., 37 All., 127.

compromise when matters are before the revision Court is fatal by reason of section 345 (7).

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In my opinion therefore the offence cannot be compounded at the present stage.

TYABJI, J.

AYLING, J.—I have had the advantage of perusing the judgment of my learned brother, and concur in the conclusion at which he has arrived on the preliminary question for our decision.

AYLING, J.

In my opinion section 345, Criminal Procedure Code, is exhaustive of the circumstances and conditions under which composition can be effected. No other meaning can be given to clause (7). With great respect to the learned Judges who decided *Emperor v. Ram Piyari*(1) I cannot see how an order permitting composition can be treated as an "incidental order" within the meaning of clause (d) of section 423, Criminal Procedure Code, and I do not think that section confers on an Appellate Court any powers relating to composition independent of section 345.

AYLING and TYABJI, JJ.—Dealing with the revision petitions on their merits we see no reason to interfere with the convictions. As regards sentences, the Public Prosecutor represents that in view of the family nature of the quarrel, and the other circumstances of the case, it is not necessary to send the petitioners (who are now on bail) back to prison. We are disposed to take the same view, and we reduce the sentences in each case to the terms of imprisonment already undergone by the petitioners. The bail bonds are discharged.

AYLING AND
TYABJI, JJ.

N.B.

(1) (1909) I.L.R., 32 All., 153.