

## REVISIONAL CRIMINAL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice  
Agha Haidar.*

NAURANG RAI—Petitioner

*versus*

KIDAR NATH AND ANOTHER—Respondents.

Criminal Revision No. 1826 of 1926.

*Criminal Procedure Code, Act V of 1898, section 345—  
Compoundable offences—Sub-section (1)—duty of Magistrate  
—to record an acquittal—Inquiry—competent—Sub-section  
(2)—Sanction of Court—compromise invalid without—In-  
quiry—not competent.*

*Held*, that section 345 of the Criminal Procedure Code is exhaustive on the subject of the composition of offences mentioned therein. *Under sub-section (1)*, as soon as the parties have arrived at a compromise, the Magistrate has nothing more to do except to record a judgment of acquittal; and if one of the parties subsequently resiles from the composition it is competent to the Court to take evidence as to the *factum* of the composition and to give effect to it, if it is found to have been entered into.

*Mahomed Kanni Rowther v. Pattani Inayathalla Sahib (1)*, *Murray v. Queen Empress (2)*, and *Imperator v. Mulo (3)*, referred to.

*In cases governed by sub-section (2) of section 345*, however, the Magistrate has to perform the judicial act of deciding whether in the interests of justice the parties should be allowed to compromise and, unless and until the Court has given its sanction, the so-called compromise arrived at between the parties outside the Court is of no legal effect and cannot be taken cognizance of by any Court dealing with the offence.

*Kumaraswami Chetty v. Kuppaswami Chetty (4)*, referred to.

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(1) (1916) I. L. R. 39 Mad. 946. (3) (1912) 6 S. L. R. 284.

(2) (1894) I. L. R. 21 Cal. 103. (4) (1918) I. L. R. 41 Mad. 685.

And, there is no rule of law which would enable the Court in a case under sub-section (2) to order an inquiry into the *factum* of a compromise alleged by one of the parties and denied by the other.

*Case reported by J. N. G. Johnson, Esquire, District Magistrate, Delhi, with his No. 155/R of 7th December 1926.*

SHAMAIR CHAND and R. C. SONI, for Petitioner.  
KISHEN DAYAL, for Respondents.

*The report of the District Magistrate, Delhi*

The proceedings are forwarded for revision on the following grounds:—

This has been entered as an application to me for revision under sections 437, 435, Criminal Procedure Code. It should, however, in my opinion, be under sections 435, 438.

The point at issue before me is one of some little interest. Since the alleged offence for which accused is on his trial is under 420, Indian Penal Code, his counsel admits that even if a compromise has been effected out of Court for due consideration the Court has a right under 345 (2), Criminal Procedure Code, to refuse to permit the compromise. But he goes on to argue that if, as in this instance, it be alleged that during the trial of the case a compromise was made for due consideration and that the complainant has resiled from such compromise, then the Court—if it would have been prepared to permit such compromise—has a right to hold an enquiry and to record evidence as to whether the parties actually came to some such agreement out of Court or not.

This is a position which I cannot accept, but he has succeeded in convincing the lower Court, as the Magistrate's order shows.

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In my opinion, that order shows some confusion of thought, and the Magistrate has been misled by quotation of rulings which have bearing only on cases of compromise under 345 (1), Criminal Procedure Code, *i.e.*, when the Court has no voice in the matter. In the particular case under consideration, when the charge is under 420, Indian Penal Code, and any compromise must be under 345 (2), Criminal Procedure Code, there can be nothing in the way of compromise which can be held to be legally binding on either party (much less to warrant enquiry and recording of evidence in proof of it!) unless or until an application for permission to compromise under section 345 (2) is made by the parties to the Court. And in any case the Magistrate when he writes in his order "If the circumstances under which compromise was arrived at, allow, the Court has no option but to accord sanction and assent to the *factum* of compromise" is definitely wrong, in so far as a compromise under 345 (2), Criminal Procedure Code, is concerned. At least that is my view and interpretation of the law which I submit for the consideration of the Hon'ble High Court.

For this case has been dragging on since September 1925 in the Courts of two Magistrates, and there have been lamentable delays for one reason or another. I may note that the first Magistrate, as the record shows, definitely decided against the allegation of a compromise having been effected; but the defence, arguing that the case is being tried *de novo* by the second Magistrate, have succeeded in convincing the latter that their allegation merits enquiry.

Accordingly under 438, Criminal Procedure Code, I report the case for the orders of the Hon'ble

High Court, with my recommendation that the Magistrate's order of 8th November last be reversed and that he be directed to try out this already unduly protracted case without further ado and to bring it to a speedy conclusion.

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SHADI LAL, C.J.

The Order of Sir Shadi Lal, C.J., dated 25th February 1927, referring the case to a Division Bench.

The rule laid down in *Mahomad Kanni Rowther v. Pattani Inayathalla Sahib and others* (1), is to the effect that a composition arrived at between the parties to a compoundable offence mentioned in section 345 (1), Criminal Procedure Code, is complete, as soon as it is made; and that, if one of the parties subsequently resiles from the composition, it is competent to the Court to take evidence as to the *factum* of the composition and give effect to it if it is found to have been entered into. The question for determination is whether the same rule is applicable to a composition in respect of an offence mentioned in section 345 (2), Criminal Procedure Code, which can be compounded only with the permission of the Court. The learned counsel on both sides have expressed their inability to cite any judgment on this point, and I consider that the matter should be decided authoritatively by a Division Bench.

I accordingly refer the case to a Division Bench and direct that an early date be fixed for hearing.

The judgment of the Division Bench was delivered by:—

AGHA HAIDER J.—A complaint under section 420 of the Indian Penal Code was filed on the 28th

(1) (1916) I. L. R. 39 Mad. 946.

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of September 1925, by Naurang Rai (complainant) against Kidar Nath and Shiv Parshad. On the 10th of December 1925, an application was put in by Kidar Nath and Shiv Parshad asking the Magistrate, in whose Court the complaint was pending, that permission to enter into a compromise be accorded to them and the applicants be discharged, on the basis of a certain alleged compromise which had been arrived at between the parties after the institution of the complaint. The learned Magistrate under his order dated the 8th of November, 1926, directed the applicants (the accused) "to produce complete evidence, oral or documentary in proof of the *factum* of the compromise". The order of the Magistrate cannot be called a model of lucidity and parts of it are not easily intelligible.

The complainant applied in revision to the learned District Magistrate who has expressed the opinion that, in view of the fact that the complaint related to an offence under section 420 of the Indian Penal Code, there could not be a compromise which would be legally binding upon the parties unless and until an application for permission to compromise under section 345 (2) was made by the parties to the Court, and that there was, therefore, no warrant for ordering an inquiry into the *factum* of the compromise. The learned District Magistrate has accordingly reported the case for the orders of this Court with a recommendation that the Magistrate's order dated the 8th of November, 1926, be reversed and that he be directed to try the case on its merits.

The reference came up before one of the members constituting the present Bench who, under an order dated the 25th February 1927, referred the

case to a Division Bench. The matter has now come before us for disposal.

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Section 345 of the Criminal Procedure Code is divided into two sub-sections. Sub-section (1) deals with certain offences punishable under the sections of the Indian Penal Code which are specified therein, and it is provided that offences falling under those sections may be compounded by persons mentioned in column 3. Sub-section (2) contains a list of certain other sections of the Indian Penal Code, and it provides that the offences punishable under these sections can be compounded by the persons mentioned in column 3 only with the permission of the Court before which a prosecution for any of those offences is pending. Section 420 of the Indian Penal Code, with which the accused persons were charged in the present case, comes under section 345 (2) of the Criminal Procedure Code. It may be taken as settled law that section 345, Criminal Procedure Code, is exhaustive on the subject of the composition of offences mentioned therein. There is a case reported in *Mahomed Kanni Rowther v. Pottani Inayathalla Sahib and others* (1), in which it was laid down that, if the parties to a criminal case pending in a Criminal Court arrive at a compromise outside the Court and one of the parties resiles from it, it is competent to the Court to enquire whether or not the parties had settled their dispute, and if it finds that there has been a valid composition, the Court should pass an order of acquittal. In other words, the jurisdiction of the Court to go on with the trial of the case comes to an end when the parties have arrived at a valid compromise, vide *Murray v.*

(1) (1916) I. L. R. 39 Mad. 946.

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*The Queen Empress* (1), and *Imperator v. Mulo* (2). The reasoning of *Mahomed Kanni Rowther v. Pattani Inayathalla Sahib and others* (3), which was a case under section 345 (1), Criminal Procedure Code, is perfectly clear. Under sub-section (1) of section 345, Criminal Procedure Code, as soon as the parties have arrived at a compromise, the Magistrate has nothing more to do except to record a formal judgment of acquittal.

The case of section 345 (2) of the Criminal Procedure Code is, however, different and is not covered by any direct authority. In cases governed by this sub-section the permission of the Court before which a prosecution is pending is essential before the case can be validly compounded. The Magistrate, when the parties have come to a compromise, has to perform the judicial act of deciding whether in the interests of justice the parties should be allowed to compromise the offence with which the accused is charged. In *Kumaraswami Chetty v. Kuppuswami Chetty* (4), Abdul Rahim J., who had delivered the principal judgment in *Mahomed Kanni Rowther v. Pattani Inayathalla Sahib and others* (3), referring to the cases falling under section 345 (2) of the Criminal Procedure Code, observed that the operation of the composition in these cases is necessarily suspended until the Court sanctions it. In other words, no effect can be given to a compromise as a plea in bar of conviction in cases covered by clause (2) unless the Court has given its sanction. Without the sanction of the Court, the so-called compromise arrived at between the parties, outside the Court, is of no legal effect and cannot be taken cognizance of

(1) (1894) I. L. R. 21 Cal. 103. (3) (1916) I. L. R. 39 Mad. 946.

(2) (1912) 6 S. L. R. 284. (4) (1917) I. L. R. 41 Mad. 685

by any Court dealing with the offence. The jurisdiction of the Court to try the case on the merits remains unaffected, and there is no rule of law, based either upon the express language of the Legislature or deducible from any general principles, which would enable the Court in a case falling under sub-section (2) of section 345, Criminal Procedure Code, to order an enquiry into the *factum* of a compromise alleged by one of the parties and denied by the other.

This being so, we accept the recommendation of the learned District Magistrate, quash the order passed by the trial Magistrate dated the 8th of November 1926, and direct him to dispose of the case pending before him on its merits.

*N. F. E.*

*Revision accepted.*

*Case remanded for trial.*

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