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RAM LAL AND ANR.

v.

STATE OF JAMMU AND KASHMIR

JANUARY 25, 1999

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[K.T. THOMAS AND M.B. SHAH, JJ.]

Code of Criminal Procedure, 1973 : Section 320

C *Compounding of offences—Permissibility of—Only such offences can be compounded as are included in two tables of Section 320—None else can be compounded.*

D *Section 326 IPC—Offence under—Held non-compoundable—An offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all—Request of accused to compound offence under Section 326 rejected—But sentence reduced to period of imprisonment already undergone.*

Section 324 IPC—Offence under—Compounding of—Joint application filed by legal representatives of complainant and accused—Permission granted by court and conviction and sentence of accused set aside.

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Y. Suresh Babu v. State of AP & Anr., (1987) 2 JT 361 and Mahesh Chand and Anr. v. State of Rajasthan, [1990] SCC (Suppl.) 681, held per incuriam.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.

F 70 of 1999.

From the Judgment and Order dated 2.7.98 of the Jammu & Kashmir High Court in Crl. F.A. No. 10 of 1982.

D.D. Thakur and Rajeev Sharma for the Appellant.

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M.C. Dhingra, (NP) (G.M. Kawoosa) for Ashok Mathur for the Respondent/Complainant/ For State.

The following Order of the Court was delivered :

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Leave granted.

The first appellant Ram Lal stands convicted of the offence under Section 326 of the IPC and is undergoing a sentence of three years. The second appellant has been convicted of Section 324 of the IPC and was sentenced to imprisonment for two years. The parties have compromised and a petition for compounding has been filed. We cannot accede to the request for compounding in regard to the offence under Section 326 IPC as the same is a non-compoundable offence. Sri D.D. Thakur, learned Senior Counsel invited our attention to the decisions of this Court in *Y. Suresh Babu v. State of AP and another*, (1987) 2 JT 361 and *Mahesh Chand and another v. State of Rajasthan*, [1990] SCC Suppl. 681, wherein non-compoundable offences were allowed to be compounded. In *Y. Suresh Babu* (supra) it was specifically observed that the said case "shall not be treated as a precedent." In the latter case (*Mahesh Chand*) offence under Section 307 IPC was permitted to be compounded with the following observations :

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"We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence."

We are unable to follow the said decision as a binding precedent. Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the Court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-Section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms :

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"(9) No offence shall be compounded except as provided by this section."

It is apparent that when the decision in *Mahesh Chand* (supra) was rendered attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned Judges who rendered the decision in *Y. Suresh Babu* (supra) drawn. Hence those were decision rendered *per incuriam*. We hold that an offence which law declares to be

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A non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

However, considering the fact that parties have come to a settlement B and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith.

C Regarding the second appellant we permit the parties to compound the offence (section 324 IPC) in view of the joint application filed by the legal representatives of the deceased complainant and the second appellant (vide his application No. Crl. M.P. No. 7648/98). In view of the aforesaid compounding of the offence under Section 324 of IPC we set aside the D conviction and sentence passed on the second appellant and he is acquitted under Section 320(8) of the Code of Criminal Procedure, 1973.

The appeal is disposed of accordingly.

T.N.A.

Appeal disposed of.