



**REPORTABLE**

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Criminal Writ Petition No. 365/2023

Shyam Bacchani



----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Vikas Bodani S/o Motilal, R/o Villa No.82, Royal Celebrity Jaisinghpura, Bhankrota, Jaipur Rajasthan.
3. Kavita Bodani W/o Vikas Bodani, R/o Villa No.82, Royal Celebrity Jaisinghpura, Bhankrota, Jaipur Rajasthan.

----Respondents

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For Petitioner(s) : Petitioner present in person

For Respondent(s) : Mr. Atul Sharma, Dy.GA

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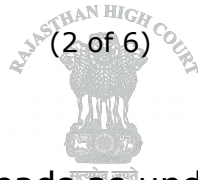
**HON'BLE MR. JUSTICE BIRENDRA KUMAR**

**Order**

**01/03/2023**

1. Heard the petitioner in person as well as learned Public Prosecutor for the State.
2. The question raised in this petition under Article 226 of the Constitution of India is whether the Lok Adalats under Chapter VI of the Legal Services Authority Act, 1987 have adjudicatory power or are required to pass awards only on consensus of the parties.
3. By the impugned order dated 14.05.2022, a Bench of the Lok Adalat, Jaipur has allowed the Assistant Public Prosecutor to withdraw the criminal prosecution arising out of FIR No.537/2018 corresponding to Criminal Case No.13/2019 and discharged the accused from offences under Sections 323 and 341 of IPC.





4. The impugned order reads as under:-

“सहायक अभियोजन अधिकारी उपस्थित। महानगर मजिस्ट्रेट क्रम 10 जयपुर महानगर द्वितीय में लंबित पत्रावली राष्ट्रीय लोक अदालत में पेश हुई। सहायक अभियोजन अधिकारी द्वारा राज्य सरकार के आदेश क्रमांक प.16(01)ल.प्र./ विविध/गृह-10/2020 दिनांक 12.05.2022 की पालना में प्रकरण को वापस किये जाने हेतु प्रार्थना पत्र पृथक से प्रस्तुत किया गया। पत्रावली का अवलोकन किया गया। सहायक अभियोजन अधिकारी प्रार्थना पत्र के आधार पर प्रकरण वापस किये जाने की अनुमति दी जाकर अभियुक्तगण विकास S/o मोतीलाल व कविता पत्नी विकास को आरोपित अपराध अंतर्गत धारा 323, 341, 34 IPC के अपराध से उन्मोचित/दोषमुक्त किया जाता है। पत्रावली में कोई कार्यवाही शेष नहीं है। पत्रावली फ़ैसल शुमार होकर बाद तकमील दाखिल दफ़्तर हो।”

5. The petitioner is informant of FIR No.537/2018 registered with Police Station Bhankrota, Jaipur (West) for offences under Sections 323, 341 and 34 of IPC. The FIR discloses dispute between the two neighbours. After investigation of the case, the Police submitted charge-sheet for offence under Sections 341 and 323 of IPC.

6. Grievance of the petitioner is that Lok Adalat has no jurisdiction to allow withdrawal of criminal prosecution. Moreover, the petitioner was not noticed while passing the impugned order. Learned counsel contends that the Lok Adalat can dispose of the cases only on compromise between the parties.

7. Learned State Counsel contends that under Section 321 of Cr.P.C., the learned Public Prosecutor is competent to withdraw criminal prosecution specially considering trivial nature of offences alleged, which is compoundable and bailable.

8. The prayer of Assistant Public Prosecutor for withdrawal of the prosecution was purportedly under Section 321 of Cr.P.C. which reads as under:-



**“321. Withdrawal from prosecution.-** The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, **with the consent of the Court**, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried;”**(emphasis is mine)**

9. Evidently, the withdrawal of prosecution is not a unilateral exercise of power by the Public Prosecutor rather it is subject to consent of the Court, therefore application of mind and adjudication whether such prayer of prosecution is fit to be allowed is within domain of the Court. Now the question to be considered is whether the Lok Adalats can also exercise identical power under Chapter VI of the Legal Services Authority Act, 1987.

10. Section 19 and Section 20 under Chapter VI are relevant for consideration which are reproduced below:-

**“[19. Organisation of Lok Adalats.—**

**(1)** Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

**(2)** Every Lok Adalat organised for an area shall consist of such number of—

**(a)** serving or retired judicial officers; and

**(b)** other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

**(3)** The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be



prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

- (i) any case pending before; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.]

**“[20. Cognizance of cases by Lok Adalats.—**

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19—[20. Cognizance of cases by Lok Adalats.—(1) Where in any case referred to in clause (i) of sub-section (5) of section 19—"

- (i) (a) the parties thereof agree; or
- (b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
- (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court **except after giving a reasonable opportunity of being heard to the parties. (emphasis is mine)**

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat **except after giving a reasonable opportunity of being heard to the other party. (emphasis is mine)**

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat **shall proceed to**





**dispose of the case or matter and arrive at a compromise or settlement between the parties. (emphasis is mine)**

(4) Every Lok Adalat shall, while determining any reference before it under this Act, **act with utmost expedition to arrive at a compromise or settlement between the parties** and shall be guided by the principles of justice, equity, fair play and other legal principles. **(emphasis is mine)**

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).] ”

11. A bare perusal of the aforesaid provisions make it abundantly clear that when a case, pending before the Court (as in the present case) is referred to the Lok Adalat, the parties thereof must agree for reference. If one of the parties only makes an application to the Court for such reference, other party must have opportunity of hearing before hand for reaching at conclusion by the Court that the matter is fit one to be referred to the Lok Adalat.

12. The provisions of sub-section (3), sub-section (4) and sub-section (5) as well as sub-section (6) of Section 20 referred above would indicate that the Lok Adalat has to endeavour that the parties arrive at a compromise and settlement. Only on compromise between the parties, the award can be made and if the parties does not arrive to a compromise or settlement, the Lok



Adalat is bound to remit back the matter before the Court under sub-section (6) of Section 20 of the Act.

13. A perusal of the entire scheme under Chapter VI (supra) as well as the referred provisions aforesaid would make it clear that the Lok Adalats have no adjudicatory power and by allowing the prayer of learned Public Prosecutor to withdraw prosecution, the Lok Adalat has exercised adjudicatory jurisdiction which is not vested in it.

14. In the result, the impugned order passed by the Lok Adalat is hereby quashed and this Writ Petition is allowed.

15. Let the criminal matter be restored before the competent Court and the parties would be at liberty to proceed according to law.

16. Let a copy of this order be served on the Member Secretary, Rajasthan State Legal Services Authority, Jaipur also for needful.

(BIRENDRA KUMAR),J

Ashwani/-68