
(2019) 03 UK CK 0092

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 425 Of 2019

Ajay Barakoti & Another

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 354A, 504, 506
Code Of Criminal Procedure, 1973 — Section 320, 320(9), 482
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0092

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Mahendra Singh Rawat, Sandeep Tandon, K.K. Harbola

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. Criminal writ petition has been filed by the petitioners for quashing the impugned FIR dated 29.11.2018, registered as FIR no. 634 of 2018 for the offences punishable under Sections 504, 506, 354-A IPC, at police station Rudrapur, District Udham Singh Nagar, on the basis of compromise arrived at between the parties.

2) Compounding application, being CLMA no. 3373 of 2019, has been filed by the parties to indicate that they have buried their differences and have settled their dispute amicably. Joint compromise has been filed alongwith affidavits of petitioners as well as of the complainant-respondent no. 3.

3) Petitioners Ajay Barakoti and Smt. Rewati Devi are present in person before the Court, duly identified by their counsel Mr. Mahendra Singh Rawat, Advocate. Complainant-respondent no. 3 Kusum Lata is also present in person before the Court, duly identified by her counsel Mr. K.K. Harbola, Advocate.

4) Complainant-respondent no. 3 stated that she is no more interested in

prosecuting the petitioner, in as much as the parties have entered into a compromise and the dispute between the parties has been resolved amicably. She further stated that she may be permitted to compound the offences complained of against the petitioners. The statement given by the complainant-respondent no. 3 in the open Court has been affirmed on behalf of the petitioners.

5) Offences punishable under Sections 504 and 506 of IPC are compoundable offences. The only question which is left for consideration of this Court is whether the victim-complainant should be permitted to compound the offence punishable under Section 354-A IPC complained of against the petitioners or not?

6) Hon'ble Apex Court in the case of Central Bureau of Investigation vs. Sadhu Ram Singla and others, reported in 2017 5 SCC 350, in paragraph nos. 7 to 14 has held as under:

"7. We have heard learned Additional Solicitor General appearing for the CBI and learned senior counsel appearing for the respondents at length and carefully examined the materials placed on record. We have also taken notice of the fact that the counsel for the appellant in High Court had sought time for filing the reply but no reply was filed. We have also taken notice of the fact that the High Court while quashing the said FIR and consequential proceedings, has relied on the Full Bench judgment of that High Court in the case of Kulwinder Singh & Ors Vs. State of Punjab & Anr., 2007 (4) CTC 769, in which reliance was placed on the judgment delivered by this Court in the case of Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney.

8. Learned Additional Solicitor General appearing for the CBI has drawn our attention to the decision of this Court in Manoj Sharma Vs. State & Ors "22. Since Section 320 CrPC has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 CrPC to direct doing something which CrPC has expressly prohibited. Section 320(9) CrPC expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence."

9. We further wish to supply emphasis on the judgment delivered by this Court in the case of State of Tamil Nadu Vs. R. Vasanthi Stanley & Anr., (2016) 1 SCC 376, wherein it was observed:

"15. As far as the load on the criminal justice dispensation system is concerned it has an insegregable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can

never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of."

10. Further reliance was placed on the decision of this Court in the case of Central Bureau of Investigation Vs. A. Ravishankar Prasad & Ors., (2009) 6 SCC 351, wherein it was held:

"39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice."

11. Lastly, reliance was placed upon another judgment of this Court in Central Bureau of Investigation Vs. Maninder Singh, (2016) 1 SCC 389, wherein it was held by this Court:

"19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi case, (2014) 15 SCC 29, the order of the High Court cannot be sustained."

12. Resisting the aforesaid submissions it was canvassed by Mr. Bishwajit Bhattacharya, learned senior counsel appearing for the respondents that High Court has judiciously and rightly considered the facts and circumstances of the present case. Relying upon the judgment of this Court in Gian Singh Vs. State of Punjab & Anr., (2012) 10 SCC 303, learned senior counsel appearing for the respondents strenuously urged that the offences in the present case are not heinous offences. He further drew our attention towards the relevant part of Full Bench judgment of the High Court in Kulwinder Singh & Ors. Vs. State of Punjab & Anr. (supra), which was reproduced in the impugned judgment and the same is reproduced hereunder:

"26. In Shakuntala Sawhney v. Mrs. Kaushalya Sawhney & Ors., (1980) 1 SCC 63, Hon'ble Krishna Iyer, J. aptly summed up the essence of compromise in the following words:

"4.... The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.

30. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything; except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice.

31. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C."

13. Since the present case pertains to the crucial doctrine of judicial restraint, we are of the considered opinion that encroaching into the right of the other organ of the government would tantamount clear violation of the rule of law which is one of the basic structure of the Constitution of India. We wish to supply emphasis on para 21 of the Manoj Sharma's case (supra) which is as follows:

"21. Ordinarily, we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in *Aravali Golf Club v. Chander Hass* (2008) 1 SCC 683 and *Govt. of A.P. v. P. Laxmi Devi* (2008) 4 SCC 720, restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."

14. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma's case (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties."

7) Since the complainant-respondent no. 3 has settled the dispute amicably with the petitioners, therefore, she should be permitted to compound the offences complained of against the petitioners in the interest of society as well as in the interest of justice as continuation of the present investigation against the petitioners will be a futile exercise. Furthermore, in case trial is held and concluded, the chances of conviction of the petitioners in near future are very bleak.

8) Compounding application is allowed. As a consequence thereof, criminal writ petition is also allowed. Impugned FIR dated 29.11.2018, lodged by respondent no. 3, registered as FIR no. 634 of 2018, under Sections 504, 506, 354-A of IPC, at P.S. Rudrapur, District Udham Singh Nagar, is hereby quashed on the basis of compromise arrived at between the parties.