
(2009) 11 UK CK 0004
In the Uttarakhand High Court

Akhilesh Kumar and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 204, 320, 482
Penal Code, 1860 (IPC) — Section 147, 323, 427, 452, 504

Citation : (2009) 11 UK CK 0004

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Judgement

V.K. Bist, J.—This Criminal Misc. Application preferred u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) has been filed for quashing of the proceedings of criminal case No. 335 of 2007 "Sanjay Kumar v. Akhilesh Kumar and Ors.", u/s 147, 452, 323, 504, 506, 427 IPC, pending before the Court of Judicial Magistrate, Kashipur, District Udham Singh Nagar.

2. From perusal of the record it transpires that on 25.08.2006 the complainant-Sanjay Kumar filed a complaint case before the Court of A.C.J.M., Kashipur, District Udham Singh Nagar in which the A.C.J.M., Kashipur recorded the statement of the complainant u/s 200 Cr.P.C.. The A.C.J.M, Kashipur also recorded the statement of the witnesses u/s 202 Cr.P.C.. Thereafter the C.J.M. vide order dated 19.09.2006 took cognizance in the matter and found that prima-facie a case u/s 147, 452, 323, 504, 506, 427 IPC is made out against five accused persons, namely, Akhilesh Kumar, Pawan Kumar @ Aashish, Arun Kumar, Anil Kumar and Prashand Kumar. He accordingly issued summons under Section-204 Cr.P.C. against these accused persons. Being aggrieved with the summoning order, the applicants Akhilesh Kumar and Pawan Kumar have come up before this Court seeking quashing of the order passed by the C.J.M, Kashipur.

3. Sri Devesh Bishnoi, learned Counsel for the applicants, Sri M.A. Khan, learned Brief Holder for the State and Sri Manav Sharma, learned Counsel for the complainant Sanjay Kumar are present before the Court today.

4. The applicants, namely, Akhilesh Kumar and Pawan Kumar are the residents of Mahajan Tola, Hajipur, District Vaishali (Bihar), who have been identified by Sri Devesh Bishnoi, Advocate and the complainant Sanjay Kumar is the resident of House No. C-533, Awas Vikas, Kashipur, District Udham Singh Nagar, who is identified by Sri Manav Sharma, Advocate, have jointly moved an application bearing CRMA No. 803/2009 u/s 320 Cr.P.C. seeking permission of the Court for compounding the offence. In the accompanying affidavit filed by the applicant Akhilesh Kumar, it has been stated that he is also doing pairvi on behalf of applicant No. 2 Pawan Kumar who is his son. It is further stated in the affidavit that the matter has been settled amicably between the parties and now there remains no dispute between the applicants and the complainant/respondent No. 3. Both the parties have also moved joint compromise wherein it is averred that the matter has been settled amicably between the applicants/ first party and respondent No. 3/ second party and now the second party does not want to proceed with the case No. 335 of 2007 u/s 147, 452, 323, 504, 506, 427 IPC P.S. Kashipur, District Udham Singh Nagar.

5. Sri Devesh Bishnoi, the learned Counsel for the applicants and Sri Manav Sharma, the learned Counsel for the complainant/ respondent No. 3, both have made statement, at bar, that the parties have entered into a compromise outside the Court, with their free will and without any pressure. They have further submitted that about a period of 3 years" has been passed and the parties are living peacefully and their relations are cordial.

6. I have heard learned Counsel for the parties and have gone through the record.

7. Learned Counsel for the applicants relied on paragraph-10 & 11 of the judgment of the Supreme Court reported in B.S. Joshi and Others Vs. State of Haryana and Another, which is quoted hereunder:

10. In State of Karnataka v. L. Muniswamy considering the scope of inherent power of quashing u/s 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence. What would happen to the trial of the case where the wife does not support the imputations made in the

FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered as her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on the earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences? The answer clearly has to be in the "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

11. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* it was held that while exercising inherent power of quashing u/s 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings.

8. Learned Counsel for the applicants further relied on paragraph-6 of the judgment of Supreme Court reported in *Madan Mohan Abbot Vs. State of Punjab*, , which is reproduced below:

6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

9. Learned Counsel for the applicants has submitted that there are inherent powers of the High Court contained in Sections 482 and 320 of the Cr.P.C. for quashing of criminal proceedings or FIR or complaint and in non compoundable cases the Section 320 Cr.P.C. does not limit or affect the powers u/s 482 Cr.P.C. He further argued that quashing of criminal proceedings or FIR or complaint is permissible where non compoundable offences are involved.

10. Sri M.A. Khan, learned Brief Holder for the State has submitted that he has no objection, if the parties have entered into a compromise and have sought

permission of the Court in this regard to compound the matter.

11. After considering the facts and circumstances of the case and the principle laid down in the cited judgment of Hon"ble the Apex Court, this Court is of the view that permission for compromise is essential and necessary. Further, considering the fact that the parties have entered into an amicable settlement and no useful purpose will be served to prolong the pendency of the above mentioned case. Accordingly, the CRMA No. 803/2009 u/s 320 Cr.P.C. seeking permission to file compromise arrived at between the parties is allowed.

12. The compromise is accepted.

13. Accordingly, the application is allowed the proceedings of criminal case No. 335 of 2007 "Sanjay Kumar v. Akhilesh Kumar and Ors.", u/s 147, 452, 323, 504, 506, 427 IPC, pending in the Court of Addl. Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar, so far as it relates to the applicants, namely Akhilesh Kumar and Pawan Kumar, is hereby quashed.

14. The Crl. Misc. Application is disposed of