

(2017) 10 UK CK 0015
In the Uttarakhand High Court
Case No : 1728 of 2017

Ashok Mandal and three others	Vs	APPELLANT
State of Uttarakhand and others		RESPONDENT

Date of Decision : 26-10-2017

Acts Referred:

Citation : (2017) 10 UK CK 0015

Advocate : M.K.Ray, Prabha Naithani, M.S.Bhandari

Final Decision : Disposed

Judgement

1. The writ petitioners, by means of present Writ Petition, seek to quash the impugned FIR dated 21.10.2016 being FIR No. 232 of 2016, under Section 420 of IPC, lodged by respondent no. 3, at Transit Camp, District Udham Singh Nagar.

2. A first information report was lodged by respondent no. 3 against the writ petitioners for the offences punishable under Section 420 of IPC. A compounding application being CRMA No. 13513 of 2017 has been filed by the parties to indicate that they have buried their differences and have settled their disputes amicably. Victim Vishakha is present in person before this Court, duly identified by her counsel Mr. M.S.Bhndari, Advocate. Petitioners Ashok Mandal, Amar Mandal

and Niranjan are also present in person, duly identified by their counsel Mr. M.K.Ray, Advocate. Victim Vishkha submitted before this Court that she has no grievance left against the writ petitioners and she is no more interested in prosecuting the petitioners, in as much as, the dispute has been settled amicably between the parties with the intervention of some elderly persons of the society. In other words, the person aggrieved has exonerated the present petitioners.

3. The question which arises for consideration of this Court is- whether the respondent no. 3 should be permitted to compound the offence complained of

against the petitioners or not?

4. The Apex Court has dealt with the consequence of a compromise in regard to non-compoundable offences in the case of B. S. Joshi and others vs. State of Haryana and another, (2003)4 SCC 675 and has held as below:

"If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power."

Thus, the High Court in exercise of its inherent power can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the

5. Hon"ble Supreme Court has permitted compounding of such offences in the decision of Nikhil Merchant v. CBI and another, (2008) 9 SCC 650.

6. Learned counsel for the parties drew the attention of this Court towards the ruling of Gian Singh v. State of Punjab and another, (2013) 1 SCC (Cri) 160, in which Hon"ble Supreme Court observed as below: "The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view,

because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

7. While deciding whether to exercise its inherent jurisdiction or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may accept the settlement to quash the criminal proceedings. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases, where the charge is framed but the evidence is yet to start, the High Court can exercise its powers, but after prima

facie assessment of the circumstances/material mentioned therein. This Court is of the opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the first information report in question would be an exercise in futility.

8. The obvious reply to the question posed in para 3 is in the affirmative in view of the decision of Hon"ble Apex Court in Gian Singh's case (supra), and hosts of other cases.

9. In view of the above, the impugned FIR dated 21.10.2016 being FIR No. 232 of 2016, under Section 420 of IPC, lodged by respondent no. 3, at Transit Camp, District Udham Singh Nagar and the criminal proceedings emanating therefrom, are hereby quashed qua the writ petitioners.

10. Criminal Writ Petition No. 1728 of 2017 is thus disposed of in terms of compromise arrived at between the parties.