
(2014) 03 UK CK 0047

In the Uttarakhand High Court

Case No : Criminal Misc. Application No. 144 of 2014

Dilsher

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 320, 482
Penal Code, 1860 (IPC) — Section 120B, 366, 368, 376, 376A

Citation : (2014) 1 NCC 895

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Saurabh Pande, Adv., holding brief of Sudhir Singh, Advocate for the Appellant; Hari Om Bhakuni, Learned A.G.A, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—The applicants, by means of present petition moved u/s 482 Cr.P.C., seek to quash the entire proceedings of Sessions Trial No. 377 of 2013, captioned as State v. Dilsher, under Sections 366, 368, 376, 120B and 506 of IPC, pending in the Court of Sessions Judge, Udham Singh Nagar. A charge-sheet for the offences punishable under Sections 366, 368, 376, 120B, and 506 of IPC was submitted against the accused (applicant No. 1 herein). They are undergoing trial in ST No. 377 of 2013 in the Court of Sessions Judge, Udham Singh Nagar. Present application under petition 482 Cr.P.C. has been moved on behalf of the accused-applicant No. 1 and another (prosecutrix) for quashing the proceedings of Sessions Trial No. 377 of 2013.

2. The accused and the prosecutrix moved an application for compounding. In other words, the prosecutrix sought permission to compound the offences alleged against the accused (applicant No. 1 herein). Both Rahul Jaha alias Munni and the accused Dilsher have filed their affidavits.

3. It may be noted here that the aforesaid offences, except the offence punishable u/s 506 of IPC, are non-compoundable offences within the scheme of

Section 320 of Cr.P.C. The question which arises for consideration is-whether the offences punishable u/s 366, 368, 376, 120B and 506 of IPC should be permitted to be compounded against the applicants or not? Whether the prosecutrix should be permitted to compound such offences against the accused or not?

4. Learned counsel for the petitioners drew the attention of this Court towards the ruling of Gian Singh Vs. State of Punjab and Another, 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 u/s 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."

5. It, therefore, transpires that no such permission for compounding can be given. If permission to compound the offences punishable under Sections 366, 368, 376, 120B of IPC is granted, the same will be against the public policy of this country. Considering the nature and gravity of offences alleged against the accused-applicant No. 1, it is not possible to grant permission to the prosecutrix to compound such offences. Compounding application is, therefore, dismissed. Since the compromise is not being permitted, which was the sole basis of present petition, therefore, the application u/s 482 Cr.P.C. is also dismissed. It is however directed that the trial pending against the accused-applicant No. 1 herein shall be concluded as expeditiously as possible in the light of proviso of Section 309 of Cr.P.C. which provides that when the inquiry or trial relates to an offence under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge-sheet.