

(2017) 08 UK CK 0031
In the Uttarakhand High Court
Case No : 1151 of 2017

Hasmat Ali Saklani and two others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 25-08-2017

Acts Referred:

Citation : (2017) 08 UK CK 0031

Hon'ble Judges : U.C. Dhyani

Bench : Single Bench

Advocate : Lalit Sharmal, ?S. S. Adhikari,?M.C.Bhatt

Judgement

1. By means of present Application under Section 482 Cr.P.C., the applicants seek to quash the summoning order dated 24.06.2017 as well as the entire proceedings of Criminal Case No. 2746 of 2017, State vs. Mohammad Babar Ali and others, under Sections 420 & 406 of IPC, pending in the Court of learned Additional Chief Judicial Magistrate, Haldwani, District Nainital.

2. A compounding application being CRMA 1486 of 2017 has been filed by the parties to show that they have buried their differences and have settled their disputes amicably. Respondent no. 2/complainant (Ms. Yashmeen) is present in person, duly identified by her counsel Mr. M.C.Bhatt, Advocate. Ms. Yashmeen (respondent no.2) says that she

has no grievance left against the applicants and she is not interested in prosecuting the applicants, inasmuch as, the dispute has been settled amicably between the parties with the intervention of some elderly persons of the society. Petitioners/applicants are also present in person duly identified by his counsel Mr. Lalit Sharma, Advocate.

3. The question, which arises for consideration of this Court, is- whether the respondent no. 2 should be permitted to compound the offences alleged against the applicants 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 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 Cr.P.C. does not limit or affect the powers under Section 482 of the Code of Criminal Procedure, 1973.

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 also 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 predominantly 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 dealing with the inherent jurisdiction, 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. Reliance may also be placed in *Dina Nath Prasad & others vs. State & Anr .*, decided by Hon'ble Delhi High

Court on 12th January, 2016 in Criminal Misc. Case no. 111 of 2016, Judgment rendered by Hon'ble Allahabad High Court on 18.11.2015 in C-482 Petition No. 31751 of 2015, *Rajendra Sharma and others vs. State of U.P. & another* and the Judgment rendered by Punjab and Haryana High Court on 29.05.2012 in Crl. Misc. Case No. 22608 of 2011, *Satwinder Singh & another vs. State of Punjab & others .*

9. The reply to the question, posed by this Court in para no. 3 of this Judgment, therefore, is in the affirmative. Otherwise also, it will be a futile exercise if proceedings of the criminal case against the applicant are kept pending when the parties have settled their disputes amicably.

10. 10. In view of the above, compounding of the offences alleged against the applicant is allowed. As a consequence of the same, the summoning order dated 24.06.2017 as well as the entire proceedings of Criminal Case No. 2746 of 2017, *State vs. Mohammad Babar Ali and others*, under Sections 420 & 406 of IPC, pending in the Court of learned Additional Chief Judicial Magistrate, Haldwani, District Nainital, are hereby quashed qua applicants.

11. Application under Section 482 Cr.P.C. is thus disposed of in terms of compromise arrived at between the parties.