
(2019) 09 UK CK 0084

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1680 Of 2018,
Compounding Application (CRMA No.11036 Of 2018)

Ishtiyak Ali Alias Ishtkaar

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 363, 366, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 5, 6
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(1)(xii)

Citation : (2019) 09 UK CK 0084

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : P.C. Petshali, Lalit Miglani, Kaushal Sah Jagati

Final Decision : Disposed Of

Judgement

R.C. Khulbe, J

1. By way of present application, moved under Section 482 of Cr.P.C. the applicant seeks to quash the charge sheet dated 27.02.2018, cognizance order dated 12.03.2018 and entire proceedings of Special Sessions Trial No.319 of 2018 pending before FTC/ Additional Sessions Judge/ Special Judge (POCSO), Udham Singh Nagar, State Vs. Ishtiyak Ali alias Ishtkaar, under Sections 363, 366 & 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) & Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in terms of compromise arrived between the parties.

2. The parties have filed a Compounding Application no. 11036 of 2018 to show that the parties have buried their differences and have settled their disputes amicably.

3. Notices were issued to informant Chaman Singh (informant) but despite personal service he did not turn up before this Court. The applicant and the respondent no.3 has solemnized marriage as per Muslims rites on 27.10.2018. The marriage Certificate is on record. At the time of marriage respondent no.3 was more than 17 years 11 months. Today both applicant and respondent no.3 are present and stated that both are living as husband and wife. There is no dispute between them. Apart from that as per FIR, there is no allegation regarding Section 376 IPC and Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. It is contended by learned counsel for the State that the offences punishable under Sections 363, 366 & 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) & Section 3(1)(xii) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not compoundable offences.

5. 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 Cr.P.C. 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 Cr.P.C. does not limit or affect the powers under Section 482 of the Code of Criminal Procedure, 1973.

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

7. 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 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."

8. Parties are present before this Court and duly identified by their respective counsel.

9. Although the offences punishable under Sections 363, 366 & 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) & Section 3(1)(xii) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not compoundable but considering the fact that the offences punishable under Sections under Sections 376 IPC and Section 3(1)(xii) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not made out; husband and wife are living together and also the fact that respondent no.3 has filed an affidavit stating that the matter has been settled amicably between the parties, it would be just and appropriate to allow the present compounding applications in the interest of justice.

10. Accordingly, the compounding application is allowed. The entire proceedings of Special Sessions Trial No.319 of 2018 pending before FTC/ Additional Sessions Judge/ Special Judge (POCSO), Udham Singh Nagar, State Vs. Ishtiyak Ali alias Ishtkaar, under Sections 363, 366 & 376 IPC and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) & Section 3(1)(xii) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

along with charge sheet dated 27.02.2018, cognizance order dated 12.03.2018 is hereby quashed, qua the present applicant only, on the basis of compromise arrived between the parties.

11. Present C482 application stands disposed of, as above.

12. Pending applications, if any, also stand disposed of accordingly.