

(2019) 08 UK CK 0073

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1887 Of 2018,
Compounding Application (CRMA No. 11325 Of 2018)

Jatin Chawala And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482

Indian Penal Code, 1860 — Section 120B, 406, 420, 467, 468, 471, 506

Citation : (2019) 08 UK CK 0073

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

Bench : Single Bench

Advocate : Rahul Consul, S.S. Adhikari, P.S. Uniyal, Lalit Miglani, Prabhat Bohra,
Ashish Joshi

Final Decision : Disposed Of

Judgement

R.C. Khulbe, J

1. By way of present application, moved under Section 482 of Cr.P.C. the applicants seek to quash the impugned charge sheet dated 05.12.2012, impugned cognizance order dated 20.12.2012 passed by the learned Judicial Magistrate, Kashipur, Udham Singh Nagar and entire proceeding of Criminal Case No.379 of 2017 (Case Crime No.026 of 2012) under Sections 420, 406, 120-B, 467, 468, 471 and 506 IPC at P.S. Kashipur, pending before learned Judicial Magistrate, Kashipur, Udham Singh Nagar in terms of compromise arrived between the parties.

2. After perusal of the record, it would reveal the respondent no.2 Anil Kumar Gupta lodged FIR No.026 of 2012 on 15.01.2012, under Sections 420, 467, 468, 471 and 506 IPC at P.S.Kashipur, District Udham Singh Nagar against the applicants. After completion of investigation a charge sheet under Sections 420, 467, 468, 471 406/120B and 506 IPC was filed against the applicants and the learned Judicial Magistrate, Kashipur, Udham Singh Nagar vide order dated

20.12.2012 took cognizance into the matter under the aforesaid sections 420, 467, 468, 471, 406, 506, 120B IPC.

3. The parties have filed Compounding Application (CRMA No.11325 of 2018) to show that the parties have buried their differences and have settled their disputes amicably.

4. It is further contended that the offences punishable under Sections 467, 468, 471, 120B IPC are non-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 in the Court today and they are duly identified by their respective counsel.

9. It is stated by the learned counsel appearing on behalf of the Bank that money has been deposited as per earlier order passed by this Court. In this regard, a report has also been submitted by him.

10. Although the offences punishable under Sections 467, 468, 471, 120B IPC are non-compoundable offences, however, in view of rulings of the Hon'ble Apex Court in the judgments supra and also considering the fact that complainant 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 application in the interest of justice.

11. Accordingly, the compounding application is allowed. The proceeding of Criminal Case No.379 of 2017 (Case Crime No.026 of 2012) under Sections 420, 406, 120-B, 467, 468, 471 and 506 IPC at P.S. Kashipur, pending before learned Judicial Magistrate, Kashipur, Udham Singh Nagar along with the impugned charge sheet dated 05.12.2012 and impugned cognizance order dated 20.12.2012 is hereby quashed, qua the applicants, on the basis of compromise arrived among the parties.

12. Order dated 01.02.2012 by which bank account of applicant no.3 was freezed is set aside.

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

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

15. Let a certified copy of this order be supplied today itself to the learned

counsel for the parties on payment of usual charges, as per rule.