
(2018) 11 UK CK 0135

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 2060 Of 2018

Kailash Chandra Tiwari & Anr

APPELLANT

Vs

State Of Uttarakhand & Ors.

RESPONDENT

Date of Decision : 01-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 427, 435, 504, 506
Code of Criminal Procedure, 1973 — Section 320

Citation : (2018) 11 UK CK 0135

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Chetan Joshi, Sandeep Tandon, Rekha Tiwari

Final Decision : Disposed Off

Judgement

Lok Pal Singh, J.

1. This writ petition has been filed for the following reliefs, among others:

i) Issue a writ, order or direction in the nature of certiorari quashing the impugned FIR no.0241 of 2017 dated 16.12.2017 under Sections 435, 427, 504 & 506 of IPC, P.S. Dineshpur, District Udham Singh Nagar lodged by respondent no.3 against the petitioners (Annexure no.1 to this writ petition).

ii) Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 not to arrest the petitioners in impugned FIR No. 0241 of 2017 dated 16.12.2017 under Sections 435, 427, 504 & 506 of IPC, P.S. Dineshpur, District Udham Singh Nagar lodged by respondent no.3 against the petitioners (Annexure no.1 to this writ petition)

2. A compounding application being CRMA No.17246 of 2018 has been filed jointly on behalf of the parties to indicate that due to the interference of the reputed persons of the locality and due to interference of the Sugar Cane Sale Centre and the respondent no.3, the parties have settled the dispute amicably.

That apart, petitioners and respondent no.3 are also present before the Court, they have been duly identified by their respective counsel. Before the Court also, parties have affirmed what is stated in the compounding application. Respondent no.3 has submitted that he does not want to proceed further against the petitioners and want to close the criminal proceedings against them.

3. Offences punishable under Section 427, 504 and 506 of IPC are compoundable offence within the scheme of Section 320 of Cr.P.C. whereas Section 435 of IPC is a non-compoundable offence.

4. 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."

5. In view of the above, compounding application is allowed. As a consequence thereof, FIR no.0241 of 2017 dated 16.12.2017 under Sections 435, 427, 504 & 506 of IPC, P.S. Dineshpur, District Udham Singh Nagar lodged by respondent no.3 is hereby quashed, qua the petitioners only.

6. Writ petition stands disposed of accordingly.

7. No order as to costs.