

(2021) 10 UK CK 0041

In the Uttarakhand High Court

Case No : Compounding Application No. 1 Of 2021 In Writ Petition (Criminal) No. 1916 Of 2021

Kalu Hasan And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 323, 295A, 296, 354B, 452, 504, 506
Code Of Criminal Procedure, 1973 — Section 320
Constitution Of India, 1950 — Article 226

Citation : (2021) 10 UK CK 0041

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

R.C. Khulbe, J

1. This petition preferred under Article 226 of the Constitution is filed with a prayer to issue a writ of certiorari to quash the impugned FIR lodged against the petitioners registered as Case Crime No.352 of 2021 lodged u/s 147, 148, 149, 452, 323, 504, 506, 354-B, 295-A, 296 IPC at P.S. Pathri, District Haridwar.

2. A compounding application no. 1 of 2021 is also filed on behalf of the parties with a prayer to compound the offences, inasmuch as, the parties have buried their differences and have settled their dispute amicably and have entered into a compromise. The application is supported by an affidavit.

3. It is reported that all the petitioners are languishing in jail. They are represented by Mr. Hasrat (father of petitioner no.3). Complainant as well as the father of the petitioner no.6 are duly identified by their respective counsel.

4. It is argued that except Sections 323, 504 and 506 IPC, all other sections alleged against the petitioners are non-compoundable.

5. The Hon'ble Supreme Court in the cases of Nikhil Merchant vs. C.B.I. and another, 2008 AIR SCW 7501 and Dimpey Gujral vs Union Territory through Administrator U.T. Chandigarh and others, [2013 (123) AIC 119 (S.C.) has permitted compounding of such type of offences, which are otherwise non-compoundable, within the scheme of Section 320 of Cr.P.C. It was observed by Hon'ble Apex Court that the inherent power of the Court will not come in the way of compounding of otherwise non-compoundable offences. The Hon'ble Apex Court in Gian Singh vs.State of Punjab and another (2013) 1 SCC (Cri) 160, has observed, in the context of such cases, as under:

"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."

6. Since, the respondent nos.2 to 4 have settled the dispute amicably with the petitioner and as they do not want to prosecute the petitioners further, therefore, the said respondents (respondents herein), should be permitted to compound such offences against the applicants.

7. In view of the above, compromise application is allowed. As a consequence of the same, impugned FIR, qua the present petitioners, is hereby quashed on the basis of compromise arrived at between the parties.

8. The present criminal writ petition is accordingly stands disposed of.

9. Pending application, if any, also stands disposed of.