

(2016) 08 UK CK 0017

In the Uttarakhand High Court

Case No : Criminal Misc. Application No. 910 of 2016.

Mohd. Nadeem and Others - Applicants @HASH State of Uttarakhand and another

Date of Decision : 01-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 308, Section 323, Section 325, Section 504, Section 506

Citation : (2016) 97 ACrC 252

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : Mr. Rajendra Singh Azad, Advocate, for the Applicants; Mr. V.K. Gimini, Dy. Advocate General with Ms. Farida Siddiqui, Brief Holder, for the Respondent/State; Ms. Lovely Grover, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Allowed

Judgement

U.C. Dhyani, J.(Oral) - In the charge-sheet filed against the accused-applicants Tanveer and Kaseem, they have been fastened under Sections 323, 325, 504, 506 IPC and in the same charge-sheet another co-accused-applicant Mohd. Nadeem has been fastened under Sections 323, 325, 308, 504, 506 IPC.

2. Present criminal misc. application under Section 482 Cr.P.C., in the form of compounding application, has been filed by the parties to indicate that they have buried their differences and have settled their dispute amicably. Affidavit of accused-applicants and the affidavit of injured complainant-respondent nos. 1 have been annexed with present C-482 application.

3. Accused-applicants Mohd. Nadeem, Tanveer and Kaseem are present in person before the Court, duly identified by their counsel Mr. Rajendra Singh Azad, Advocate. Complainant-respondent no. 1 Sarfaraz (injured) and respondent no. 2 Javed (another injured) are also present in person before the Court, duly identified by their counsel Ms. Lovely Grover, Advocate.

4. The complainant-respondent no. 1 stated that he and his brother (respondent no. 2), are no more interested in prosecuting the applicants, in as much as the

dispute between the parties has been resolved amicably. He further stated that he may be permitted to compound the offences alleged against the applicants. Accused-applicants also affirm what is stated by the complainant in the open Court.

5. Whereas offences punishable under Sections 323, 325, 504, 506 IPC are compoundable offences within the scheme of Section 320 of Cr.P.C., Section 308 IPC is not.

6. The only question which is left for consideration of this Court is whether the complainant-injured should be permitted to compound the offences alleged against the accused-applicants or not?

7. The obvious reply to the question posed above is in the affirmative in view of the decision rendered by Hon"ble Supreme Court in the cases of Dimpy Gujral v. Union Territory through Administrator U.T. Chandigarh and others, [2013 (123) AIC 119 (S.C.)] and Narendra Singh and others v. State of Punjab and another, (2014) 6 SCC 466, where the said Court has permitted compounding of such type of offences, which are otherwise non-compoundable, within the scheme of Section 320 of Cr.P.C.

8. It will also be useful to reproduce the law laid down by Hon"ble Apex Court in Gian Singh v. State of Punjab and another (2013) 1 SCC (Cri) 160, wherein it was 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 of 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 proceedings 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."

9. Since the complainant-respondent no. 1 and respondent no. 2 have settled the dispute amicably with the accused-applicants, therefore, they should be permitted to compound the offences complained of against the accused-applicants in the interest of society as well as in the interest of justice.

10. Application under Section 482 of Cr.P.C. is, therefore, allowed. Charge sheet dated 10.02.2015 and cognizance order dated 26.05.2015, as also the entire proceedings of criminal case no. 464 of 2015 (old no. 515 of 2015), under Sections 323, 325, 308, 504, 506 IPC, pending in the court of Judicial Magistrate I, Roorkee, District Haridwar are hereby quashed on the basis of compromise arrived at between the parties.