
(2018) 10 UK CK 0054

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 1668 of 2018, Compounding application No. 11025 of 2018

Mohd. Noor and Others

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 22-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 47, 148, 323, 325, 406, 420, 467, 468, 471A, 498A, 504, 506
Code of Criminal Procedure, 1973 — Section 320, 320(2), 482
Constitution of India, 1950 — Article 136, 226

Citation : (2018) 10 UK CK 0054

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : D.K. Sharma, Prateek Tripathi, Lalit Miglani, D.N. Sharma

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J.

1. The present C482 application is listed for the following reliefs:

It is expedient and necessary in the interest of justice that the Hon'ble Court may graciously be pleased to quash/set aside the summoning

order dated 04.08.2018 passed in Criminal Case No. 7203 of 2018 under Section 147, 148, 325, 323, 504 & 506 IPC State versus Mohd. Noor and

Ohters pending before the Court of Judicial Magistrate Rudrapur, District Udham Singh Nagar, in view of the fact that the matter has been amicably

settled by the parties and the complainant and injured do not wish to prosecute the applicants and/or pass any other order of direction as this

Hon'ble Court may deem fit and proper in the circumstances of the case, otherwise the applicants shall suffer irreparable loss and injury.

It is further prayed that this Honâ??ble Court may graciously be pleased to stay the entire proceedings of the Criminal Case No. 7203 of 2018 under

Section 147, 148, 325, 323, 504 & 506 IPC State versus Mohd. Noor and Others, Police Station Gadarpur, District Udham Singh Nagar pending

before the Court of Judicial Magistrate, Rudrapur, District Udham Singh Nagar, otherwise the applicants shall suffer irreparable loss and injury.â??

2. It is also accompanied with the Compounding Application duly supported by the affidavits filed by the parties to the C482 application, whereby, they

have made the averments to the effect that considering the fact that they belong to the same family and there had been some minor family scuffle

amongst them resulting into lodging of the FIR on 31.05.2017 for the offences under Sections 147, 148, 325, 323, 504 & 506 of IPC, which on the

culmination of the investigation has resulted into registration of the Criminal Case, being Criminal Case No. 7203 of 2018 â??State vs. Mohd. Noor and

Othersâ??, which is pending consideration before the Court of Judicial Magistrate, Rudrapur, District Udham Singh Nagar. The parties to the C482

application, who had appeared in person before this Court had submitted a joint affidavit bearing signatures of all the complainants, injured and the

accused persons and they have been duly identified by their counsel.

2. In the Compounding Application and, in particular, the affidavits filed in support to it they have submitted that considering the fact that they belong

to the same family clan and the incident was on account of just a spur of moment due to heat exchange between the family members, and as such,

they want the same to be compounded now as the complainant do not want to prosecute the accused persons any further. The criminal cases and

offences to which it relates be compounded in wider interest of the parties.

3. The Compounding Application as submitted is opposed by the Government Advocate Mr. Lalit Miglani on the ground that few offences for example

these under Sections 147, 148 & 325 are not compoundable under Section 325 of Code of Criminal Procedure. So far as the argument to this aspect is

concerned, the offences under Section 325 is compoundable with the leave of the Court and as far as the offence under Sections 147, 148 is

concerned there had been catena of judgment rendered by the Honâ??ble Apex Court as well as the judgment of the Coordinate Bench of this

Court, wherein, considering the facts and circumstances of each case the impact

of Sections 147 and 148 has to be considered as to whether its composition will have any adverse social impact or not and also the fact as to whether on composition of those offences it will result into bringing the parties to tranquility amongst themselves.

4. On considering the averments made in paragraph 6 of the affidavit filed by the complainant, wherein, he has expressed his inclination not to prosecute the accused persons any further owing to the settlement already arrived at, the parties have prayed for the composition of offence.

5. In view of the fact that the complainant himself as well as injured, who is present before this Court, have showed their magnanimity to not to prosecute the accused person, it will be absolutely a futile exercise and wastage of time and money in forcing the parties in the C482 application to undertake the criminal trial which is pending before the Judicial Magistrate, Rudrapur, District Udham Singh Nagar. The aforesaid ratio also stands settled by the various judgments rendered by the Honâ??ble Apex Court, which are quoted hereinbelow.

6. The Honâ??ble Apex Court in the case of Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303 has held as follows:

â??58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled

although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the

case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.

No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of

society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid

compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like

murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like

Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim

can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

61. 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-dominatingly civil favour 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.â??

7. The Honâ??ble Apex Court in the aforesaid case of Gian Singh (Supra) has also dealt with the judgment in the cases of B.S. Joshi and others Vs.

State of Haryana and another reported in (2003)4 SCC 675 and Nikhil Merchant Vs. Central Bureau of Investigation and another reported in (2008) 9

SCC 677.

8. The Honâ??ble Apex Court in the case of B.S. Joshi and others Vs. State of Haryana reported in (2003) 4 SCC 675, has held as follows:

â??6. In Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749], this Court with reference to Bhajan Lalâ??s case

observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying

rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole

purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of

course, where there is more power, it becomes necessary to exercise utmost care

and caution while invoking such powers.

8. It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or

FIR or complaint as vested in Section 482 of the Code or extra ordinary power under Article 226 of the Constitution of India. We are, therefore, of the

view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 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.

10. In *State of Karnataka v. L. Muniswamy & Ors.* [(1977) 2 SCC 699], considering the scope of inherent power of quashing under Section 482, this

Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of

justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the

structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of

justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that

the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to

save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and

contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offence.

What would happen to the trial of the case where the wife does not support the imputations made in the FIR of the type in question. As earlier

noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There

may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other

family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted

company and is living happily on her own or has married someone else on earlier

marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds. In such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in "negative". It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

11. In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.* [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code."

9. The Hon'ble Apex Court in the case of *Nikhil Merchant (supra)* has held as follows:-

"7. In support of the aforesaid contentions made on behalf of the appellant before the High Court, reference was made to the decision of this Court in the case of *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* (1996) 5 SCC 591 wherein on the basis of facts similar to the facts of this case, this Court had held that even if an offence of cheating is prima facie made out, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Bank, for all intents and purposes, amount to compounding of the offence of cheating. This Court accordingly, upheld the order of the High Court quashing the criminal complaint after the civil action had been compromised between the parties.

8. Apart from the said decision, reliance was also placed on another decision of this Court in the case of *B.S. Joshi and Ors. v. State of Haryana and*

Anr (2003) 4 SCC 675 wherein while dealing with the proceedings under Sections 498A and 406 Indian Penal Code involving matrimonial disputes and

offences, this Court held that even though the provisions of Section 320 of the Code of Criminal Procedure would not apply to such offences, which

are not compoundable it did not limit or affect the powers under Section 482 and the powers conferred on the High Courts and the Supreme Court

under Articles 226 and 136 of the Constitution of India. Referring to the decision of this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC

335 this Court observed that the categories indicated in the said case which warranted exercise of power under Section 482 CrPC were only

illustrative and not exhaustive. This Court ultimately held that the High Court in exercise of its inherent powers can quash criminal proceedings or a

FIR or complaint and Section 320 CrPC does not limit or affect the power of the High Court under Section 482 of the Code.

9. After considering the said decision in the light of the submissions made on behalf of the respective parties, the High Court took the view that in the

Duncans Agro case (supra) this Court was considering the situation involving Section 420 IPC which was compoundable under Section 320(2) CrPC,

while in the instant case, the charge sheet was also under Sections 467, 468, 471-A IPC along with the provisions of the Prevention of Corruption Act,

which were non- compoundable. The High Court, therefore, held that neither of the said two cases would have application to the facts of this case and

rejected the appellant's prayer for discharge from the criminal cases.â??

10. In view of ratio laid down by the Honâ??ble Apex Court in the judgments cited hereinabove, the present C482 application would stand allowed

subject to the terms and condition of the Compounding Application and the observations as made above. Consequently, the Criminal Case No. 7203 of

2018 â??State vs. Mohd. Noor and Othersâ?? under Sections 147, 148, 325, 323, 504 & 506 of IPC pending before the Judicial Magistrate, Rudrapur,

District Udham Singh Nagar, is hereby quashed.

11. Consequently, the present C482 application would stand allowed. There would be no order as to cost.