

(2019) 11 UK CK 0098

In the Uttarakhand High Court

Case No : Compounding Application No. 15255 Of 2019, Miscellaneous
Application No. 15256 Of 2019 In Criminal Writ Petition No. 2002 Of
2019

Nipendra Sharma & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 379, 411

Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2019) 11 UK CK 0098

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Abhishek Verma, Saurabh Kumar Pandey, Rajendra Singh Negi,
Mahboob Rahi

Final Decision : Allowed/ Disposed Of

Judgement

Manoj K. Tiwari, J

1. Heard learned counsel for the parties.
2. By means of this writ petition, petitioners have sought quashing of impugned F.I.R. dated 11.11.2019, being F.I.R./Case Crime No. 296 of 2019, under Section 379 IPC (during investigation Section 411 IPC has been added), registered at P.S. ITI Kashipur, District Udham Singh Nagar.
3. A compounding application, jointly signed by counsel for the complainant (respondent No. 3) and counsel for the petitioners has been filed duly supported by affidavits of pairakar of petitioner no. 3 and respondent No. 3 (complainant).
4. Complainant as well as pairakar of petitioners are present in the Court today who are duly identified by their respective counsels. It is reported that petitioners are in jail in connection with F.I.R./Case Crime No. 296 of 2019, under Section 379 IPC (during investigation Section 411 IPC has been added).

5. Learned counsels for the parties submit that the dispute has been amicably settled between the parties and the parties have decided to bury the hatchet.

6. The complainant made a statement that in view of the compromise arrived at between him and the petitioners; he does not want to pursue the matter any further, therefore offences be compounded.

7. Having heard learned counsels for the parties and also considering the broad guidelines issued by Hon'ble Apex Court in the case of Gian Singh Vs State of Punjab reported in (2012) 10 SCC 303 and Narinder Singh & others Vs State of Punjab & another reported in (2014) 6 SCC 466, request of the petitioner deserves to be acceded to.

8. Hon'ble Supreme Court in the case of Gian Singh (Supra) has held in para 53, 54 and 57, as under:-

"53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding

or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment."

9. In the case of Narinder Singh (Supra) Hon'ble Apex Court has held in para 11, 12 & 17, as under:-

"11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines: (Gian Singh case, SCC pp. 340-41, para 58)

"58. Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the 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 wrongdoing that seriously endangers and threatens the well-being of the 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 the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the 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."

12. Thereafter, the Court summed up the legal position in the following words: (Gian Singh case, SCC pp. 342-43, para 61)

"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 an FIR or

a 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The Court in Gian Singh case was categorical that in respect of serious offences or other offences of mental depravity or offence of merely dacoity under special statute, like the Prevention of Corruption Act or the offences committed by public servant while working in that capacity. The mere settlement between the parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.

17. We would like to expand this principle in some more detail. We find, in

practice and in reality, after recording the conviction and while awarding the sentence/punishment the court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the court, particularly in those cases where the crimes committed are heinous in nature or depict depravity, or lack morality. At times it is to satisfy the element of "emotion" in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious, namely, cases involving heinous crime with element of criminality against the society and not parties inter se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences, etc. would clearly fall in this category. After all, justice requires long-term vision. On the other hand, there may be offences falling in the category where the "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two conflicting interests which is to be achieved by the court after examining all these parameters and then deciding as to which course of action it should take in a particular case."

10. A perusal of the F.I.R. indicates that the dispute between the parties is private in nature and the matter is still being investigated by the police and no chargesheet has been filed as yet, as informed by the learned counsel for the parties.

11. Since the parties have entered into a compromise, therefore, possibility of the trial resulting into conviction of the accused is remote and bleak and, that being so, continuation of criminal proceedings would visit the accused with great oppression, prejudice and injustice. Rather, it would tantamount to abuse of process of law. Ends of justice would be met only if criminal proceedings are put to an end, because this would allow the parties to translate their decision to live in peace in the reality. The only consideration for the compromise reached between the parties seems to be their desire to bury the hatchet for all times to come. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court

which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

12. In view of above discussion, the writ petition is allowed. F.I.R. dated 11.11.2019, being F.I.R./Case Crime No. 296 of 2019, under Section 379 IPC (during investigation Section 411 IPC has been added), registered at P.S. ITI Kashipur, District Udham Singh Nagar is hereby quashed along with all the proceedings emanating therefrom qua petitioners only. Liberty is granted to the persons, who are in jail, to approach the Magistrate concerned for obtaining the order for their release with regard to the aforesaid F.I.R.

13. Compounding application is, accordingly, disposed of.

14. Miscellaneous application also stand disposed of.

15. Let a certified copy of this order be issued today itself.