

(2021) 09 UK CK 0139

In the Uttarakhand High Court

Case No : Writ Petition (Crl.) No. 1313 Of 2021, Compounding Application
(IA/3/2021)

Raghav Mehra And Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 10-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 307, 308, 323, 324, 325, 326, 420, 452, 467, 468, 471, 504, 506
Code Of Criminal Procedure, 1973 — Section 173, 320, 320(9), 482
Prevention Of Corruption Act, 1988 — Section 5(1)(d), 5(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 09 UK CK 0139

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

Bench : Single Bench

Advocate : Piyush Garg, Lalit Miglani, Ravi Bisht

Final Decision : Disposed Of

Judgement

R.C. Khulbe, J

1. By means of this writ petition, filed under Article 226 of the Constitution of India, petitioners seek to quash the impugned FIR bearing No.0025 of 2021 registered under Sections 308, 326, 324, 325, 323, 504, 506 and 34 of IPC at P.S. Mussoorie, District Dehradun.

2. The parties have filed the above-numbered compounding application to show that they have buried their differences and have settled their disputes amicably. They are also present before the Court today being duly identified by their respective counsel.

3. Learned counsel for the State opposes the compounding application.

4. It is contended by learned counsel for the writ petitioners that the offences punishable under Sections 323, 324, 325, 504, 506 IPC are compoundable

whereas offences under Sections 308, 326, 34 IPC are non-compoundable offences.

5. The Apex Court has dealt with the consequence of a compromise in regard to non-compoundable offences in the case of B.S. Joshi and others vs. State of Haryana and another, (2003) 4 SCC 675 and has held as below: -

"6. In Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749], this Court with reference to Bhajan Lal'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."

6. The aspect pertaining to the composition of offence and its ambit and amplitude came up for consideration in the case of "*Nikhil Merchant v. CBI and another*", reported in (2008) 9 SCC 677. Although it was in relation to the offence under Sections 420, 467, 468 and 471 of the I.P.C. read with Section 5 (2) and 5 (1) (d) of the Prevention of Corruption Act, but it has widely laid down the principles of compounding and settlement under Section 320 of the Code of Criminal Procedure. Paragraph No.6 of the said judgment reads as under:

"6. Before the High Court, it was urged that since the subject matter of the dispute had been settled between the appellant and the Bank, it would be unreasonable to continue with the criminal proceedings which had been commenced on a complaint filed on behalf of the Bank having particular regard to clause 11 of the consent terms by which the parties had withdrawn all claims against each other. It was submitted that the learned Special Judge had erred in rejecting the appellant's prayer for discharge from the criminal case."

7. Similarly, in the matter of "*Gian Singh v. State of Punjab and another*", (2013) 1 SCC (Cri) 160, the Hon'ble Supreme Court has observed as under:-

"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.

58. Where the High Court quashes a criminal proceeding having regard to the fact 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.

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 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 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."

8. The issue regarding the composition of an offence based on settlement under Section 307 of the I.P.C. was considered by the Hon'ble Apex Court in the case of "Dimpey Gujral and ors. Vs. Union Territory Through Administrator, U.T. Chandigarh and ors." reported in (2013) 11 SCC 497. This was a case where the offence which was considered to be compounded was at a stage when after submission of the report under Section 173 of the Cr.P.C., the charges were already framed in relation to the offences as involved therein, being the offences covered by Sections 147, 148, 149, 323, 307, 452 and 506 I.P.C. Widely it involved the offences with which we are concerned partially in the present matter and other connected cases. Primarily, the said judgment which was dealing with the powers for compounding the offence under Section 307 I.P.C. has derived the ratio and distinction which has been laid down in the case of Gian Singh (Supra)

regarding the inherent powers and powers given under statute under Section 320 Cr.P.C. and has held out that even the offences as narrated therein whichever is inclusive of offence under Section 307 IPC, would be compoundable though not covered by Section 320 of the Cr.P.C. Para 8 of the judgment of Dimpey Gujral (Supra) reads as under:-

"5. In the light of the above observations of this Court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

9. The Hon'ble Apex Court in the case of "Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and ors. Vs. State of Gujarat and anr." reported in (2017) 9 SCC 641 was dealing with the powers of the Superior Courts under Section 482 Cr.P.C.. The said judgment too places reliance on the ratio as propounded in Gian Singh (Supra). The judgment of Parbatbhai Aahir (Supra) could widely be summarized as under :-

(1) Section 482 Cr.PC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 Cr.P.C. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482 Cr.P.C., the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plentitude, it has to be exercised to secure the ends of justice and to prevent an abuse of the process of any Court.

(5) The decision as to whether a complaint or F.I.R. should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately

on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(6) In the exercise of power under Section 482 Cr.P.C. and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or fences such as murder, rape and dacoity cannot be appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(8) The High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between the private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

10. Similarly, a Five Judges' Bench of the Punjab & Haryana High Court, in the case of Kulwinder Singh Vs. State of Punjab, reported in (2007) 4 CTC 769 , was called upon to answer the powers of High Court which it can exercise under Section 482 of the Cr.P.C. while considering the composition of offence under Section 320 Cr.P.C. and settling of a dispute on the basis of the compromise arrived between offender and the victim. Apart from laying down the wide ratio pertaining to the nature of offence involved in the said case, it has laid down a broader guidelines to the effect that any offence in relation to a human body, other than murder and culpable homicide, they can be permitted to be compounded when the Courts on the basis of material on record, forms an opinion in terms of the settlement between the parties that such a settlement, when it is fair not ill motivated and voluntary, it could be compounded. In addition to it, there is another test which has to be considered is that such type of terms of settlement for a heinous offence, resulting to bodily injury, each terms of settlement has to satisfy the conscious of the Courts and it has to be seen that it has been fairly arrived at without any duress or oppression being made by the offenders on the victim taking advantage of its autocratic capacity on the victim and also it has to be seen that as to whether the weak victim have not been made vulnerable to the powers of the superiors. This judgment, too,

has provided that the only factors to be considered by the High Court under C-482 Cr.P.C. are to prevent the abuse of the process of any Court and to secure the ends of justice, uphold law its intentions, under a given set of circumstances amongst the parties.

11. In view of what has been discussed, it could safely be inferred that the power of compounding on one hand under Section 320 Cr.P.C., and quashing of the criminal proceedings, charge sheets, summoning orders or compounding of offence based on settlement in exercise of inherent powers, are not to be treated as synonymous to one other but only has to be restricted by the condition precedent to satisfy the criteria of these two different and distinct aspects of law for compounding of an offence so as to render substantial justice. What is to be seen is also important, as to the communality, its harmony of the offence which is to be settled in the exercise of powers in favour of the accused persons. This Court is of the view that if there are sufficient element available that the settlement was fairly entered into without any oppression being exercised as against the victim, and it ultimately results into resolving this discord amongst the parties to a lis, the bar of Sub-section (9) of Section 320 Cr.P.C. for composition of an offence would not come into play when the Court exercises its inherent powers under C-482, which also legislatively has administratively purpose of enforcing justice.

12. In view of discussions and reasons enumerated, the conclusion which could be safely deduced is that the powers under Section 320 Cr.P.C. of compounding of offences within its ambit will have to be read distinct to the powers vested with superior Courts under Section 482 Cr.P.C. and Writ Courts under Articles 226 and 227 of the Constitution of India and they cannot be limited and circumscribed, as they carry a distinct and wide powers of exercising the inherent powers to eradicate the abuse of process of law. Thus, even heinous offences which are not compoundable under Section 320 Cr.P.C., which includes offences under Sections 147, 148 and 307 I.P.C. and so forth can be compounded but with the frame work of guidelines laid down by the Hon'ble Apex Court and, in particular, testing each case based on its own factual merits. It could also be concluded by saying that concept of compounding also achieves wider social objectives to bring peace amongst people, increasing tranquility and saving the litigants from facing long drawn judicial proceedings.

13. In view of the ratio as laid by the Hon'ble Apex Court in the catena of decisions, cited hereinabove, Compounding Application No.3 of 2021, filed by the parties, is allowed and the entire proceedings, mentioned hereinabove, are hereby quashed qua the present petitioners, namely, Raghav Mehra, Gaurav Sehgal and Sanju Kumar on the basis of compromise arrived at between the parties.

14. Since the petitioners are reported to be in judicial custody, they shall be released forthwith, if not required in any other case.

15. The writ petition, along with all pending application(s), stands disposed of in the aforesaid terms.