
(2018) 09 UK CK 0064

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1754 of 2018, Compounding Application No. 14363 of 2018

Ram Prakash and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 308, 323, 354, 406, 420, 467, 468, 471A, 498A, 504, 506

Code of Criminal Procedure, 1973 — Section 320, 320(2), 482

Scheduled Castes and Scheduled Tribes (prevention of atrocities) act, 1989 — Section 3(i)(x)

Constitution of India, 1950 — Article 136, 226

Citation : (2018) 09 UK CK 0064

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : M.K. Ray, B.S. Thind, M.S. Bhandari

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J.

This Writ Petition has been preferred by the present petitioners, who are present in person before this Court and duly identified by Mr. M.K. Ray,

learned counsel for the petitioners. Similarly, the complainant/respondent No.3 too is present in the Court and is identified by Mr. M.S. Bhandari,

learned counsel for respondent No. 3.

The respondent No. 3 is the complainant who lodged an F.I.R. on 08.09.2018, which has been registered as Case Crime No. 49 of 2018, under

Sections 147, 148, 149, 307, 504, 506 and 323 I.P.C., Police Station Kotwali Srinagar, District Pauri Garhwal.

This Court, in principle, is not willing to accept the contentions raised in the Compounding Application because it is a very pathetic state of affairs that these students who have taken admission in one of the renowned Universities of the State, namely H.N.B. Garhwal University, Srinagar have come up to build their career at cost and expenditure which is being met by their parents but the unfortunate part of it is that they have been engaging themselves in riotism by actively participating in the election proceedings and creating pandemonious scene and thereby disturbing the atmosphere of the Campus itself.

In the FIR as lodged by respondent No.3, he contends that he is a student of the H.N.B. Garhwal University. He has raised an allegation against the petitioners and there have been certain ideological political rivalries amongst themselves. On account of certain differences between them and a group of 42-45 students, attacked each other which has resulted in the lodging of the F.I.R.

Present Compounding Application has been submitted on the basis by the parties to the Writ to the effect that now they have settled their scores and

the respondent No. 3 who is present in person submits that considering the terms which have been entered into between them, he does not want to

prosecute the petitioners for the offences levelled by him against them. Para 3 to 7 of the compounding application read as under :-

â??3. That it is most respectfully submitted that at this stage the respondent no.-3 is not willing to futher prosecute the petitioners and it was decided

by the parites and the writ petition be decided in terms of the compromise and accordingly the impugned first information report may kindly be

quashed to meet the ends of justice.

4. That it is most respectfully submitted that the infromant/respondent no.-3 is not willing to futher prosecute the petitioners hence aat this stage, since

the investigation is in progress, therefore, in the interest of justice the impugned first information report may kindly be quashed.

5. That it is most respectfully submitted that since a prayer has been made for quashing the first information report on the basis of the compromise, the

separate affidavits on behalf of the petitioners as well as the informant/respondent no.-3 are also annexed to futher substantiate the fact that all of

them have amicably settled the dispute to support the compounding application.

6. That it is most respectfully submitted that the petitioners are innocent students and they have been falsely implicated in the present matter.

7. That since the parties have amicably settled the dispute and the respondent no.-3 is not further willing to prosecute the petitioners hence it is in the

interest of justice that on the basis of the compromise entered between the parties the impugned first information report registered as Case Crime 49/

2018, under sections 147, 148, 149, 307, 504, 506 and 323 I.P.C., Police Station Kotwali Srinagar, District Pauri Garhwal may kindly be

quashed.

Having said so, this Court is also to keep in mind that these are the students who have come up to build their career and, in case, they are forced to

undergo the criminal investigation and consequential trial, it may in the long run ruin their career.

Considering the aforesaid aspect only, this Court allows the Writ Petition on the basis of the settlement arrived at between the parties and quashes the

impugned F.I.R. dated 08.09.2018 lodged by respondent No.3 which has been registered as Case Crime No. 49 of 2018, under Sections 147, 148, 149,

307, 504, 506 and 323 of the I.P.C., Police Station Kotwali Srinagar, District Pauri Garhwal.

Learned A.G.A. submits that settlement / compromise entered into between the students may not be a compoundable offence as they do not fall

under the provision contained under Section 320 Cr.P.C.

Though the learned A.G.A. may be right in his stand but considering the fact that the parties have settled their dispute outside the Court and the

complainant do not want to prosecute the petitioners for the offences levelled against them, it would be the fruitless exercise to force the parties to the

litigation to face the trial.

Learned counsel for the petitioners has placed reliance in the case of Mohit and others Vs. State of Uttarakhand and others reported in 2017 SCC

OnLine Utt 446. Para 39 and 10 of the judgment read as under :-

3. The question, which arises for consideration of this Court is whether the victims / injured should be permitted to compound the offences

punishable under Section 323, 354, 504 & 506 of IPC and Section 3(1) (X) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities)

Act, 1989 or not ?

9. While dealing with the inherent jurisdiction, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may accept the settlement to quash the criminal proceedings. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases, where the charge is framed but the evidence is yet to start, the High Court can exercise its powers, but after prima facie assessment of the circumstances / material mentioned therein. This Court is of the opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the first information report in question would be an exercise in futility.

10. The reply to the question, posed by this Court in para no.3 of this judgment, therefore, is in the affirmative. Otherwise also, it will be a futile exercise if proceedings of the criminal case against the applicant are kept pending when the parties have settled their disputes amicably.â??

Learned counsel for the petitioners has already placed reliance in the cases of Rajesh Kumar and four others Vs. State of Uttarakhand and another reported in 2017 SCC OnLine Utt 1083 and Pappu Negi @ Girish Negi and another Vs. State of Uttarakhand and another reported in 2017 SCC OnLine Utt 700.

To support his stand, he also places reliance in the case of Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303. The Honâ??ble Apex Court in para 58 and 61, which are quoted hereunder, had laid down a wider principle under which the High Court while exercising its power under Section 482 Cr.P.C. will have to deal with each cases and its impact irrespective whether it is compoundable or non-compoundable.

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-dominantly 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??

It is further laid down that if the Court arrives at a conclusion that continuance of the criminal proceedings will be a futile exercise and it would not

lead to meet ends of justice, the parties to the proceedings may not be forced to undergo the trial in a proceeding which otherwise has got no logical

conclusion. In para 61 of the judgment, the Honâ??ble Apex Court has dealt with the inherent power and wide plenitude with no statutory limitations

but it has to be exercised by the Court in accord with the guidelines engrafted in such power.

Another judgment, on which, the reliance has been placed by the learned counsel

for the parties is in the case of Mal Singh and others Vs. State of

Punjab and others reported in 2016 SCC OnLine P&H 10179. Para 8 and 10 of the said judgment reads as under :-

8. The record does not show that there was any fracture as such caused to injured-Jail Singh. However, the injury caused to the mandible is in the

nature of big contusion, reddish in colour and is a serious injury caused by the butt of the gun. Nevertheless, there was no fracture and as such, in law,

the same cannot be held to be grievous hurt, though, in other words, the same can be described as 'hurt' in the definition of 'hurt'. In that

view of the matter, even otherwise, the conviction under Section 308 of the Indian Penal Code, 1860 (IPC in short) may not be justified. It is

seen from the background facts and evidence of the case that the appellants assaulted injured-Jail Singh with the allegation that he was always

abusing. Looked from that background and at the nature of the injuries caused, as stated above, I do not think that the conviction could really be made

under Section 308 IPC. Be that as it may, without disturbing the finding of conviction; having regard to the fact that the appellants have undergone

enough sentence and further fact that the informant-Maghar Singh and injured-Jail Singh both have approached this Court by way of their application

and affidavits that they want to compound the offences in view of their relationship in the village where they live. In that view of the matter, the

counsel for the parties have prayed for compounding the offences for which they have been convicted.

10. I have considered the submissions made by the learned counsel for the parties, also the application and affidavits filed by injured-Jail Singh and

complainant-Maghar Singh residing in the same village. It is stated in the affidavits that the villagers have impressed upon them to have compounding

and live in peace. I think compounding of offences as prayed for should be allowed to be made in the light of parameters laid by the Hon'ble

Supreme Court in Gian Singh Vs. State of Punjab and another, (2012) 10 SCC 303 .

In para 10 of the case of Mal Singh (Supra), the Coordinate Bench of Punjab and Haryana High Court has considered and followed the propriety of

the judgment as laid down by the Hon'ble Apex Court in the case of Gian Singh (Supra). Moreover, the Hon'ble Apex Court in the 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.

The Honâ??ble Apex Court in the case of B.S. Joshi and others Vs. State of Haryana (2003) 4 SCC 675, while dealing with the issue as to whether

the High Court ceased with the jurisdiction under C-482 or in a writ jurisdiction, can it exercise its powers to compound the offences which are

mentioned in Section 320 Cr.P.C. In the case of B.S. Joshi (Supra), the Court while dealing with the various other judgments has held as under:

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 Limayeâ??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 â??negativeâ??. 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.â??

The aforesaid judgment of laying down the ratio with regard to the competence of the High Court in relation to the compounding of the offence not

covered by Section 320 Cr.P.C. has been followed in a subsequent judgment rendered by the Honâ??ble Apex Court in the case of Nikhil Merchant

(supra). Paragraph 7, 8 and 9 of the judgment read as under :-

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.

Considering the aforesaid aspect only, this Court allows the Writ Petition on the basis of the settlement arrived at between the parties and quashes the

impugned F.I.R. dated 08.09.2018 lodged by respondent No.3 which has been registered as Case Crime No. 49 of 2018, under Sections 147, 148, 149,

307, 504, 506 and 323 of the IPC, Police Station Kotwali Srinagar, District Pauri Garhwal.

The Compounding Application No. 14363 of 2018 would stand allowed.