

(2016) 02 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 146 of 2016.

Rohan Singh Kapkoti and Others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 326, 427, 504

Citation : (2016) 94 ACrC 226 : (2016) 162 AIC 879

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

Bench : Single Bench

Advocate : Lalit Sharma, Advocate, for the Appellant; H. S. Rawal, learned AGA, assisted by K.S. Rawal, Brief Holder and Sanjay Bhatt, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

U.C. Dhyani, J. (Oral) - The petitioners, by means of present writ petition, seek to quash the FIR No. 549 of 2014, dated 27.10.2014, lodged by respondent no. 3 at Police Station-Haldwani, District Nainital, relating to offences punishable under Sections 326, 504 and 427 of IPC on the basis of compromise arrived at between the accused and complainant as well as injured.

2. A first information report was lodged by respondent no. 3 against the petitioners for the offences punishable under Sections 326, 504 and 427 of IPC. A compounding application being CLMA No. 886 of 2016 has been filed by the parties to indicate that they have buried their differences and settled their disputes amicably. Mohit Tiwari (injured/respondent no. 4) and Atul Tiwari (complainant/respondent no. 3) are present in person before this Court, duly identified by their counsel Mr. Sanjay Bhatt, Advocate. Petitioners are also present in person, duly identified by their counsel Mr. Lalit Sharma, Advocate. Respondent no. 4 Atul Tiwari says that he has no grievance left against the writ petitioners and he is not interested in prosecuting the petitioners, in as much as,

the dispute has been settled amicably between the parties with the intervention of some elderly persons of the society. In other words, Atul Tiwari (the person aggrieved) has exonerated the present petitioners.

3. Whereas some of the offences are compoundable offences within the Scheme of Section 320 of Cr. P.C., the other offences are not. The question is? whether the respondent no. 4 should be permitted to compound the offences complained of against the petitioners or not?

4. Perused the contents of the First information report. Learned counsel for the parties drew the attention of this Court towards the ruling of *Gian Singh v. State of Punjab and another*, (2013) 1 SCC (Cri) 160, in which Hon''ble Supreme Court observed as below:

"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 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 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."

5. A reference may also be had to the decision of Narendra Singh and others v. State of Punjab and another, reported in (2014) 6 SCC 466 in this regard.

6. The instant case is squarely covered by the said ruling of the Hon"ble Supreme Court. The obvious reply to the question posed above is in the affirmative in view of the ruling of Hon"ble Apex Court in Gian Singh's case (supra).

7. In view of the above, the FIR No. 549 of 2014, dated 27.10.2014, lodged by respondent no. 3 at Police Station-Haldwani, District Nainital, relating to offences punishable under Sections 326, 504 and 427 of IPC and the criminal proceedings emanating therefrom, are hereby quashed qua the writ petitioners.

8. Criminal Writ Petition No. 146 of 2016 is thus disposed of in terms of compromise arrived at between the parties.