

(2015) 02 UK CK 0022

In the Uttarakhand High Court

Case No : Criminal Misc. Application No. 241 of 2015

Sahadat Ali and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 313, 323, 498-A

Citation : (2015) 1 NCC 476

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Parikshit Saini, for the Appellant; Raman Kumar Sah, Learned Addl. Advocate Gen. assisted by K.S. Rawal, Brief Holder, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Umesh Chandra Dhyani, J.—By means of present Application under Section 482 Cr.P.C., the applicants seek to quash the charge-sheet and the entire proceedings of Sessions Trial No. 09 of 2013, captioned as State vs. Hashmat Ali and others, under Sections 498-A, 323, 313 of IPC and Section 3/4 of the Dowry Prohibition Act, pending in the Court of 1st Additional Sessions Judge, Roorkee, District Haridwar. A compounding application being CRMA No. 276 of 2015 is filed by the parties to show that the parties have buried their differences and settled their disputes amicably. The victim Gulista is present in person, duly identified by her counsel Mr. Mohd. Safdar, Advocate. She says that since she has resolved her disputes with the applicants, therefore, she is not interested in prosecuting the applicants. The terms of settlement have been indicated in the compounding application itself. All the applicants are also present in person, duly identified by their counsel Mr. Parikshit Saini, Advocate.

2. Whereas offence punishable under Section 323 of IPC is compoundable offence within the Scheme of Section 320 Cr.P.C., the offences punishable under

Section 498-A, 313 of IPC and Section 3/4 of the Dowry Prohibition Act are not. The question, which arises for consideration of this Court, is - whether the respondent (victim) should be permitted to compound the offences against the applicants or not?

3. 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, AIR 2003 SC 1386 : (2003) CriLJ 2028 : (2003) 3 CTC 54 : (2003) 1 DMC 524 : (2003) 3 JT 277 : (2003) 3 SCALE 214 : (2003) 4 SCC 675 : (2003) 2 SCR 1104 : (2003) 2 UJ 953 : (2003) AIRSCW 1824 : (2003) 3 Supreme 227 and has held as below:

"If for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. 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."

Thus, the High Court, in exercise of its inherent power can quash criminal proceedings or FIR or complaint and Section 320 of Cr.P.C. does not limit or affect the powers under Section 482 of the Code of Criminal Procedure, 1973.

4. Learned counsel for the parties also drew the attention of this Court towards the ruling of Gian Singh Vs. State of Punjab and Another, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 , 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 *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 , reported in *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 and Criminal Appeal No. 1498 of 2014, *Manohar Singh vs. State of M.P. and another*, decided by Hon"ble Apex Court on 21.07.2014. *Manohar Singh's* case (supra) covers the case under Section 498-A and Section 3/4 of the Dowry Prohibition Act.

6. 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.

7. Compounding Application No. 276 of 2015 is thus allowed. As a consequence of the same, the charge-sheet and the proceedings of Sessions Trial No. 09 of 2013, captioned as *State vs. Hashmat Ali and others*, under Sections 498-A, 323, 313 of IPC and Section 3/4 of 5 the Dowry Prohibition Act, pending in the Court of 1st Additional Sessions Judge, Roorkee, District Haridwar, are hereby quashed qua applicants. Application under Section 482 Cr.P.C. is thus disposed of in terms of compromise arrived at between the parties.