
(2017) 01 UK CK 0048
In the Uttarakhand High Court
Case No : 145 of 2017

Sanjay Verma

APPELLANT

Vs

State of Uttarahand and another

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 120B](#) - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Punishment for Criminal breach of trust

Citation : (2017) 01 UK CK 0048

Hon'ble Judges : U.C. Dhyani

Bench : Single Bench

Advocate : Shailendra Nauriyal, Prem Kaushal, Charan Jeet Kaur, Sanjay Ratoori

Final Decision : Disposed

Judgement

1. Since the parties in the above noted writ petitions have settled their disputes amicably, therefore, all the writ

petitions are being decided together by this common judgment for the sake of brevity and convenience.

2. The applicants, by means of present petition moved under Section 482 Cr.P.C., seek to quash the charge sheets, cognizance orders as well as the entire proceedings of Criminal Case No. 477 of 2016, captioned as State vs. Pawan Pokhariyal and others, Criminal Case No. 499 of 2016, captioned as State vs. Pawan Kishore Pokhariyal and others and Criminal Case No. 500 of 2016, captioned as State vs. Pawan Kishore Pokhariyal and others, under Sections 406, 420 and 120-B of IPC, pending before Chief Judicial Magistrate, Dehradun, District Dehradun.

3. An FIR was filed by respondent no. 2 against the present applicants for the

offences punishable under Sections 406, 420 and 120B of IPC. The applicants were summoned to face the trial for the selfsame offences. Aggrieved against the same, present applications under Section 482 Cr.P.C. have been filed.

4. Compounding applications being CRMA No. 156 of 2017, CRMA No. 157 of 2017 and CRMA No. 158 of 2017 have been filed by the parties to show that the parties have buried their differences and have settled their disputes amicably. The victims Smt. Sulochana Devi, Dharampal Rauthan and Dhan Singh Bisht are present in person, duly identified by their counsel Mr. Sanjay Raturi, Advocate. The victims Smt. Sulochana Devi, Dharampal Rauthan and Dhan Singh Bisht say that there is no grievance left against the

petitioners/applicants. They further say that they are not interested in prosecuting the applicants and seek permission of this Court to compound the offences alleged against the applicants. Applicants are also present in person, duly identified by their counsel Mr. Shailendra Nauriyal, Advocate.

5. Whereas offences punishable under Sections 406 and 420 of IPC are compoundable offences within the Scheme of Section 320 Cr.P.C offence under Section 120B of IPC is not. The question, which arises for consideration of this Court, is- whether the respondent (victim) should be permitted to compound the offences alleged against the applicants or not?

6. 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:

"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."

Thus, the High Court in exercise of its inherent power 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.

7. The principles of law propounded in B.S.Joshi's case (supra) has been applied with approval in the case of Nikhil Merchant v. CBI and another, (2008) 9 SCC 650.

8. Learned counsel for the parties also 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."

9. While deciding whether to exercise its power under Section 482 Cr.P.C. or not, 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. Reliance may also be placed in Dina Nath Prasad & others vs. State & Anr ., decided by Hon"ble Delhi High Court on 12th January, 2016 in Criminal Misc. Case no. 111 of 2016, Judgment rendered by Hon"ble Allahabad High Court on 18.11.2015 in C-482 Petition No. 31751 of 2015, Rajendra Sharma and others vs. State of U.P. & another and the Judgment rendered by Punjab and Haryana High Court on 29.05.2012 in Crl. Misc. Case No. 22608 of 2011, Satwinder Singh & another vs. State of Punjab & others .

11. The reply to the question, posed by this Court in para no. 4 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.

12. In view of the above, compounding of the offences alleged against the applicants is allowed. As a consequence of the same, the charge sheets, summoning orders as well as the entire proceedings of Criminal Case No. 477 of 2016, captioned as State vs. Pawan Pokhariyal and others, Criminal Case No . 499 of 2016, captioned as State vs. Pawan Kishore Pokhariyal and others and Criminal Case No. 500 of 2016, captioned as State vs. Pawan Kishore Pokhariyal and others, under Sections 406, 420 and 120-B of IPC, pending before Chief Judicial Magistrate, Dehradun, District Dehradun, are hereby quashed qua applicants on the basis of compromise entered into between the parties.

13. All the applications under Section 482 Cr.P.C. are thus disposed of in terms of compromise arrived at between the parties.

14. Urgency applications being IA No. 670 of 2017, IA No. 671 of 2017 and IA No. 672 of 2017 also stand disposed of.