
(2019) 02 UK CK 0011

In the Uttarakhand High Court

Case No : Compounding Application No. 11193 Of 2018 In Criminal
Miscellaneous Application No. 1794 Of 2018

Shiv Shankar & Another

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 420, 468
Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2019) 02 UK CK 0011

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Rajat Mittal, Manisha Rana, Hrishek Lakhera

Judgement

Manoj K. Tiwari, J

1. Heard learned counsel for the parties and perused the records.
2. An F.I.R. was lodged by respondent No. 2 on 05.01.2010 against the applicants, under Sections 420 & 468 of I.P.C. The police, upon completion of investigation, submitted charge-sheet on 02.02.2010 under the foresaid sections against the applicants. Learned Additional Chief Judicial Magistrate, Vikasnagar, District Dehradun took cognizance against the applicants under the aforesaid sections vide order dated 22.04.2010.
3. This Criminal Miscellaneous Application has been filed by the applicants challenging the proceedings of Criminal Case No. 1027 of 2010, pending in the court of learned Additional Chief Judicial Magistrate, Vikasnagar, District Dehradun.
4. A compounding application No. 11193 of 2018 has been filed along with this criminal miscellaneous application duly supported by affidavits of the complainant/respondent No. 2 as well as the applicants.

5. Learned counsels for the parties submit that parties have buried their differences and settled the dispute amicably outside the court by entering into a compromise, therefore, no useful purpose would be served if the criminal case is continued. Learned counsel for the complainant further submits that complainant wants to compound the matter before this Court against the applicants.

6. Applicants and respondent No. 2 are present in person in Court today, who are duly identified by their respective counsels. Ms. Manisha Rana, State counsel has opposed the compounding application, as the offence under Section 468 of I.P.C. is not compoundable. She further submits that Sri Gaurav Sharma, who authorized the complainant to lodge complaint against the applicants and whose forged signature was also put on the marriage certificate, has not moved any affidavit in support of compounding application. In reply, learned counsel for the applicants and respondent No. 2 submit that in the charge-sheet, respondent No. 2 alone has been shown as complainant while Sri Gaurav Sharma is shown as witness.

7. Complainant appeared before the Court and submitted that in view of the settlement arrived between him and the applicants, he does not want to prosecute the applicants any further.

8. Hon'ble Supreme Court in the case of Gian Singh Vs. State of Punjab and Another (supra), has considered the question with regard to the inherent power of the High Court under Section 482 Cr.P.C. in quashing the criminal proceedings against the offender, who has settled his dispute with the victim of the crime in a case, where crime is not compoundable under Section 320 Cr.P.C. Paragraph Nos.57 and 58 of the said judgment are extracted below:-

"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 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 IPC 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."

9. The offence involved in this case is of a personal nature and is not an offence against the society. Moreover, it is not heinous offence showing extreme depravity.

10. Having regard to the fact that the parties have entered into a settlement and in the opinion of this Court, continuation of criminal proceedings against the applicant will be an exercise in futility, therefore, to prevent abuse of process of law, this Court can exercise its inherent powers under Section 482 Cr.P.C. in view of the law laid down by Hon'ble Supreme Court in the case of *Gian Singh Vs. State of Punjab and Another* (supra).

11. This view is fortified by the judgment rendered by Hon'ble Supreme Court in the case of *Dimpey Gujral Vs. Union Territory through Administrator U.T. Chandigarh and Others* reported in (2013) 11 SCC 497, where a chargesheet filed under Section 307 I.P.C. was also quashed.

12. In a subsequent judgment rendered in the case of *Parbatbhai Aahir Vs. State of Gujrat* reported in (2017) 9 SCC 641, Hon'ble Supreme Court has reiterated that to secure the ends of justice or to prevent the abuse of process of Court, complaint or F.I.R. can be quashed by High Court on the ground that the offender and the victim have settled the dispute and the offence is private in nature having no serious impact upon society.

13. In view of the settlement arrived between the complainant and the

applicants, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice, which would tantamount to abuse of process of law.

14. Accordingly, the criminal miscellaneous application is allowed. Criminal proceedings of Criminal Case No. 1027 of 2010, pending in the court of learned Additional Chief Judicial Magistrate, Vikasnagar, District Dehradun are quashed.

15. Compounding application is, accordingly, disposed of.