

(2018) 10 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 1867 of 2018, Compounding application
No. 15620 of 2018

Virendra Singh Alias Virendra Rai and Others

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 366, 376, 406, 467, 468, 471A, 498A, 504, 506

Code of Criminal Procedure, 1973 — Section 320, 482

Constitution of India, 1950 — Article 136, 226

Citation : (2018) 10 UK CK 0016

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : B.M. Pingal, B.S. Thind, Naresh Pant

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J.

1. In this Writ Petition which has been preferred by the petitioners. The petitioner no. 1, who is the husband of the complainant, petitioner no. 2, who is

the elder brother of petitioner no. 1, and petitioner no. 3, who is the friend of petitioner no. 1. They are present in person, identified by the learned

counsel Mr. B.M. Pingal. Respondent no. 4 is represented through Mr. Naresh Pant and duly identified by him.

2. The facts as involved in this case are very peculiar facts. It is a case where respondent no. 4, who is the wife of petitioner no. 1, admits the fact

that she was married with petitioner no. 1 on 13.02.2016. She further admits and makes a statement before this Court, the facts that their matrimony is

still continuing and are living as husband and wife, but still for the reasons best

known to her she has lodged an FIR being Case Crime No. 15 of 2018, which was later on numbered as C.B. No. 14 of 2018, for the offences punishable under Sections 366, 376, 323, 504 & 506 of IPC at Police Station Kalsi, District Dehradun.

3. She has submitted that the lodging of the FIR is on some mistaken notion and understanding, though she admits the fact that they are still living as husband and wife and she is discharging her duties as wife. The story as narrated in the FIR by the respondent no. 4 do not repose confidence to this Court that lodging of the FIR is because negligence or misconception by a wedded wife for lodging the FIR under Sections 366, 376, 323, 504 & 506 against the husband is highly improbable, which cannot be believed with by this Court.

4. This Court also cannot be oblivious of the fact that since the mistakes do occur but they may not be taken up to such a magnitude to split the family, which otherwise is living together. With a warning to respondent no. 4 to be cautious in her conduct in future, this Court with a sole motive to maintain the harmony amongst the family members and to keep the family together, allowed the Compounding Application, which has been filed by the parties, duly signed by them and supported by their affidavit, in view of the narration of facts, which has been made by respondent no. 4 in the affidavit in support of the compounding application.

5. Considering the merit of the judgments rendered by the Honâ??ble Apex Court in a category of three cases, which are quoted hereinbelow, this Court is of the view that the offences as narrated therein deserves to be compounded. Accordingly, the present Compounding Application is allowed.

6. The Honâ??ble Apex Court in the case of Gian Singh Vs. State of Punjab and another reported in (2012) 10 SCC 303 has held as follows:

â??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??

7. The Honâ??ble Apex Court in the aforesaid 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.

8. The Honâ??ble Apex Court in the case of B.S. Joshi and others Vs. State of Haryana reported in (2003) 4 SCC 675, has held as follows:

6. In *Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors.* [(1998) 5 SCC 749], this Court with reference to *Bhajan Lal'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 Limaye'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 the negative. 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.

9. The Hon'ble Apex Court in the case of *Nikhil Merchant (supra)* has held as follows:-

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.â??

10. In view of ratio laid down by the Honâ??ble Apex Court in the judgments cited hereinabove, this Writ Petition would stand allowed subject to the

terms and condition of the Compounding Application and the observations as

made above. Consequently, the FIR bearing C.B. No. 14 of 2018 (Case Crime No. 15 of 2018) for an offence under Sections 366, 376, 323, 504 & 506 of IPC registered at Police Station Kalsi, District Dehradun would stand quashed.

11. Consequently, the Writ Petition would stand allowed. There would be no order as to cost.