

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.165 of 2011

Minal Mistri

... Revisionist

vs.

State of Uttarakhand and another

... Respondents

Mr. Suresh Chandra Bhatt, Advocate for the revisionist.

Mr. V. S. Pal, A.G.A. for the State.

Mr. Deep Prakash Bhatt, Advocate for the respondent no.2.

U. C. Dhyani, J. (Oral)

1. The accused-revisionist was convicted under Sections 354, 323, 504, 506 IPC was sentenced appropriately, *vide* judgment and order dated 05.04.2010 passed by Addl. Judicial Magistrate, Khatima, District Udham Singh Nagar in criminal case no.155/2008. Aggrieved against the conviction and sentence, the convict preferred a criminal appeal No.35/2010, which was partly allowed, *vide* judgment and order dated 04.07.2011 passed by the Sessions Judge, Udham Singh Nagar, whereby the conviction of the convict under Sections 354, 323, 506 IPC was affirmed and he was exonerated of the charge under Section 504 IPC.

2. Still aggrieved against the same, present criminal revision is filed before this Court.

3. A Compounding Application (CRMA No.768 of 2014) is filed before this Court to show that the parties have settled their disputes amicably. The compounding application is supplemented by a joint compromise and further supplemented by the affidavits of convict as also the informant (respondent no.2). Respondent no.2 (informant) is the real brother of the

victim-Savita Das, who is present in person, duly identified by her counsel Mr. Deep Prakash Bhatt. The revisionist is also present in person before this Court, duly identified by his counsel Mr. S. C. Bhatt. The victim stated before this Court that she does not wish to prosecute the revisionist, in as much as, a compromise has taken place between them. She prayed that she may be permitted to compound the offence against the revisionist and the criminal revision be allowed.

4. The offence under Section 354 IPC is compoundable offence with the permission of the Court within the scheme of Section 320 Cr.P.C. The rest of the offences complained of against the revisionist are also compoundable offences within the scheme of Section 320 Cr.P.C.

5. The question is – whether the victim/complainant should be permitted to compound such offences against the convict or not? The permission can be granted to the victim to compound such offences in view of the judgments of the Hon'ble Supreme Court in **B. S. Joshi (2003) 4 SCC 675, Dimpey Gujral vs. Union Territory through Administrator U.T. Chandigarh and others 2013 (123) AIC 119, Nikhil Merchant vs. Central Bureau of Investigation and another, (2008) 9 SCC 667 and Gian Singh vs. State of Punjab and another (2013) 1 SCC (Cri) 160.**

6. Hon'ble Supreme Court in **Gian Singh's** case (*supra*) has observed as follows:-

“The position that emerges from the above discussion can be summarized 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 of 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 predominatingly 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 proceedings 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."

7. Since the victim has buried all her differences against the revisionist, therefore, she should be permitted to compound such offences against the revisionist in the interest of justice.

8. Compounding Application (CRMA No.768/2014) is allowed in the interest of justice. As a consequence thereof, the Criminal Revision is allowed. The impugned judgments and orders are set-aside. The conviction and sentence awarded to the revisionist are also set aside.

(U. C. Dhyani, J.)

Dated 30th May, 2014

Rawat