

# **IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

## **Criminal Misc. Application No.121 of 2017**

**Pushpendra Kumar Nirvan** ... Applicant

**vs.**

**State of Uttarakhand & another** ... Respondents

Mr. Abhishek Verma, Advocate present for the applicant.

Mr. Prem Kaushal and Mr. N. S. Kaniyal, Brief Holder present for the State.

Mr. Mohd. Umar, Advocate present for the respondent no.2.

### **U. C. Dhyani, J.**

1. The applicant, by means of Application under Section 482 Cr.P.C., seeks to quash the impugned chargesheet dated 27.07.2016 and the proceedings of Criminal Case No.206 of 2017 under Sections 66 & 67 of the Information Technology Act, 2000 pending in the court of the Chief Judicial Magistrate, Dehradun.

2. A Compounding Application (CRMA No.130 of 2017) is filed before this Court to show that the parties have settled their disputes amicably. Victim-respondent no.2 and the applicant are present in person, duly identified by their respective counsel. Victim/complainant has stated before this Court that the parties have settled their disputes amicably. She further stated that she does not wish to prosecute the applicant, inasmuch as a compromise has taken place between them. She prayed that she may be permitted to compound the offences against the applicant and the application under Section 482 Cr.P.C. be allowed.

3. The question is – whether the victim should be permitted to compound such offences against the applicant or not?

4. The reply to the aforesaid question is found under Section 77A of the Information Technology Act, 2000, which reads as under:

*“77A. Compounding of offences. – A court of competent jurisdiction may compound offences, other than offences for which the punishment for life or imprisonment for a term exceeding three years has been provided, under this Act:*

*Provided that the court shall not compound such offence where the accused is, by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind:*

*Provided further that the court shall not compound any offence where such offence affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or a woman.*

*(2) The person accused of an offence under this Act may file an application for compounding in the court in which offence is pending for trial and the provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 shall apply.”*

5. It will be appropriate to reproduce the observations of Hon'ble Supreme Court in **Gian Singh vs. State of Punjab and another, (2013) 1 SCC (Cri) 160**, which is quoted as below:-

*“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.”*

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

7. Compounding Application is, therefore, allowed. As a consequence thereof, application under Section 482 Cr.P.C. is also allowed. The impugned chargesheet and the proceedings of Criminal Case No.206 of 2017 under Sections 66 & 67 of the Information Technology Act, 2000 pending in the court of the

Chief Judicial Magistrate, Dehradun are hereby quashed on the basis of compromise between the parties.

**(U. C. Dhyani, J.)**  
**Vacation Judge**

Dated 31<sup>st</sup> January, 2017

Rawat