

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No. 1563 of 2018

(under Section 482 of Cr.P.C.)

With

Compounding application No. 10898 of 2018

Sahab Raja @ Raja and Others

...Applicants

Vs.

State of Uttarakhand & Others

...Respondents

Mr. Lalit Sharma, Advocate for the applicants.

Mr. V.K. Gemini, Deputy Advocate General assisted by Mr. Lalit Miglani, Brief Holder for the State of Uttarakhand/respondent no. 1.

Dated: 28th September, 2018

Sharad Kumar Sharma, J. (Oral)

Though this Court considering the fact that there has been a settlement between the parties in terms of the averments made in the Compounding Application is not very happy as to the manner in which the parties to the dispute had altercations on the issues which could have been avoided yet has taken place. As per the brief narration of the case in the FIR No. 597 of 2017 under Sections 307, 323, 504, 506 & 34 of IPC registered at Police Station Rudrapur, District Udhampur, which ultimately on the submission of the charge sheet no. 597/2017 dated 15.03.2018 by the Investigating Officer had been now registered as Criminal Case No. 5192 of 2018 'State vs. Sahab Raja and Others'. In the said case the Chief Judicial Magistrate, Rudrapur, District Udhampur had issued a summoning order dated 11.06.2018. In the Compounding Application thus preferred under joint affidavit of all the accused persons and complainants they have submitted in paragraph 4 & 5, of the application regarding terms of settlement, which is quoted hereinbelow:

"4. That the dispute was an outcome of misunderstanding pertaining to repair of fan as the applicant no. 1 runs an electrical shop and repairs electronic items. The applicant no. 2 and 3 were not even known to the complainant nor do they have any concern with applicant no. 1.

5. That now the dispute between the applicants, complainant and injured has been settled amicably and they are ready to get the offences compounded under the provisions of section 320 of Cr.P.C. therefore they are invoking inherent jurisdiction and are filing compounding application supported by the separate affidavits of the applicants and complainant”.

2. It is submitted that on account of certain misunderstanding which occurred between them on account of a dispute with regards to the repair of fan, the uncalled for incident chanced.

3. Considering the fact that even the nature of injuries, which has been shown in the medical report, they are not serious enough, which can be said to be fatal to fall within the ambit of Section 307 of Indian Penal Code. The Compounding Application has been vehemently opposed by the Government Advocate contending thereof that since the offences under Section 307 is not compoundable under Section 320 the Compounding Application deserves to be rejected. He submits that if such types of offences are permitted to be compounded, it would carry a wrong message in the Society. There is no doubt about that the offence is not compoundable, apart from the fact, that it may be at times be alarming for the public at large, but, still considering the fact of the instant case that the respondent/complainant do not want to prosecute the applicant for the offences as referred above. It would be fruitless exercise to force the party to face the Trial.

3. Considering the merit of the judgments rendered by the Hon’ble Apex Court in a category of three cases, which are quoted hereinbelow, the present Compounding Application is allowed.

4. The Hon’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:

“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.”

5. The Hon'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.

6. The Hon'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 '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."

7. 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."

8. In view of ratio laid by the Hon'ble Apex Court in the judgments cited hereinabove, this Compounding Application filed by the parties will stand allowed and the entire proceedings before the Chief Judicial Magistrate, Rudrapur, District Udhampur registered as Criminal Case No. 5192/2018 'State vs. Sahab Raja and

Others' under Sections 307, 323, 504, 506 & 34 of I.P.C. at Police Station Rudrapur, District Udhampur, which is presently pending before the Chief Judicial Magistrate, Rudrapur, Udhampur stand quashed.

9. Consequently, this application under Section 482 of Cr.P.C. would also stand allowed. There would be no order as to cost.

(Sharad Kumar Sharma, J.)
28.09.2018

Pooja