

WPCRL No. 2253 of 2019

With

CLMA No. 16949/2019 (Compounding Application)

**Hon'ble Sharad Kumar Sharma, J.**

Mrs. Pushpa Joshi, Senior Advocate assisted by Mrs. Chetna Latwal, Advocate for the petitioner.

Mr. T.C. Agarwal, A.G.A. along with Mrs. Mamta Joshi, Brief Holder for the State of Uttarakhand/respondent nos. 1 & 2.

Mr. Mohd. Safdar, Advocate for respondent no. 3.

When this writ petition was taken up yesterday for consideration of the compounding application as preferred by the parties to the writ petition seeking composition of the offence complained of against them, which was registered as an FIR No. 358 of 2019 dated 04.12.2019 at P.S. Kankhal, District Haridwar.

As per the FIR, the present petitioner is alleged as an accused for commission of an offence under Sections 341, 307 of IPC. In the compounding application, which has been filed, it has been submitted by the complainant, as well as by the petitioner that they have settled their scores outside the court and consequently they have entered into a compromise and the complainant/respondent no. 3, does not want to prosecute the petitioner anymore, and consequent thereto, an application under the joint signatures of the petitioner and respondent no. 3 as well as their respective counsels has been placed on record before this Court invoking the provisions contained under Section 320 of Cr.P.C.

When the matter was taken up yesterday, since the petitioner is already in jail the compromise and the contents of the compounding application was verified by Mr. Ajab Singh, who appeared before this

court in the proceedings held on 19.12.2019 as well as the complainant had also appeared and has also endorsed the order sheet affirming the contents of the compounding application. On the said application the learned Government Advocate was directed to seek instructions or file his objection.

Today when the matter is taken up though this Court being conscious of the fact that the offence as complained of against the petitioner is not compoundable under Section 320 of Cr.P.C. since being a heinous offence of the nature under Section 307 of IPC, but considering the fact that the parties have entered into the settlement and even if the trial is directed to be conducted in pursuance to the registration of the said offence, in all probability it will be a futile exercise because in view of the settlement the complainant may not be interested to prosecute the case as against the present petitioner and it would be nothing but an act of futility.

Learned counsel for the petitioner has also submitted that the aforesaid principle of rationally considering the compounding application has been laid down by the Hon'ble Apex Court in catena of judgments, particularly, that as reported in **2008 (9) SCC 677 Nikhil Merchant**. Another judgment on which she places reliance is the judgment reported in **2003 (4) SCC 675 B.S. Joshi**, lastly a reference is made to the judgment reported in **2012 (10) SC 302 Gyan Singh**.

On a composite reading of the aforesaid judgments the restrictions pertaining to composition of the offence has been confined to be rigidly made applicable in relation to the offences which are an offence of public affecting public at large or

which are serious enough and too heinous to the society, but as far as the offence of the like nature like Section 307 and 304, which is a subject matter of the present writ petition, but principles is laid down in Gyan Singh's case by the Hon'ble Apex Court could be derived for the purposes of considering the compounding application.

Even the Government Advocate submits that as far as the application of compounding is concerned, that cannot be considered in the light of the restrictions imposed by Section 320 of Cr.P.C., but simultaneously he agrees with the principles laid down by the Hon'ble Apex Court's judgment as referred above and looking to the circumstances under which the compounding application has been preferred since no logical conclusion could be arrived at if the trial is forced to be conducted against the petitioner, this writ petition is decided on the terms of the compounding application and as a consequence thereto, an FIR No. 358 of 2019 under Sections 341 and 307 of IPC and Section 27 of Arms Act registered at P.S. Kankhal, District Haridwar, is hereby quashed.

Subject to the condition that the petitioner is not wanted in any other case as a consequence of the today's quashing of the FIR, the Registry is directed to convey the information to the concerned Jail Superintendent for release of the petitioner.

**(Sharad Kumar Sharma, J.)**  
20.12.2019