

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

**Crl. Misc. Application (C-482) No.186 of 2022**

**With**

**Compounding Application (IA/2/2022)**

Divyansh Patel and others .....Applicants

Versus

State of Uttarakhand & another ....Respondents

Mr. Raj Kumar Singh, learned counsel for the applicants.

Mr. Pratiroop Pandey, learned AGA along with Mrs. Mamta Joshi, learned B.H. for the State.

Ms. Radha Arya, learned counsel for the private respondent.

**Hon'ble R.C. Khulbe, J.**

By way of present application, moved under Section 482 of Cr.P.C., applicants seek to quash the entire proceedings of Criminal Case No.741 of 2019, "State vs. Divyansh Patel and others", pending in the Court of Judicial Magistrate, Rudrapur, District Udham Singh Nagar.

2. The parties have filed the above-numbered compounding application to show that they have buried their differences and have settled their disputes amicably. They are also present before the Court today through V.C. being duly identified by their respective counsel. The informant fairly submitted that a compromise has taken place between the parties; earlier the co-accused Virendra Kumar and others filed C482 No.1785 of 2018 in which the compounding application has been allowed by this Court vide order dated 20.06.2019.

3. Learned counsel for the State opposed the compounding application.

4. It is contended that the offences punishable under Sections 467, 468, 471 and 120-B of IPC are non compoundable offences while Section 420 of IPC is compoundable, as per the table appended to Section 320 Cr.P.C.

5. The Apex Court has dealt with the consequence of a compromise in regard to non-compoundable offences in the case of *B.S. Joshi and others vs. State of Haryana and another*, **(2003) 4 SCC 675** and has held as below: -

“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 Jiwarekar & Ors. v. Sambhajirao Chandojirao 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."*

6. The aspect pertaining to the composition of offence and its ambit and amplitude came up for consideration in the case of **"Nikhil Merchant v. CBI and another"**, reported in **(2008) 9 SCC 677**. Although it was in relation to the offence under Sections 420, 467, 468 and 471 of the I.P.C. read with Section 5 (2) and 5 (1) (d) of the Prevention of Corruption Act, but it has widely laid down the principles of compounding and settlement under Section 320 of the Code of Criminal Procedure. Paragraph No.6 of the said judgment reads as under:

*"6. Before the High Court, it was urged that since the subject matter of the dispute had been settled between the appellant and the Bank, it would be unreasonable to continue with the criminal proceedings which had been commenced on a complaint filed on behalf of the Bank having particular regard to clause 11 of the consent terms by which the parties had withdrawn all claims against each other. It was submitted that the learned Special Judge had erred in rejecting the appellant's prayer for discharge from the criminal case."*

7. Similarly, in the matter of **"Gian Singh v. State of Punjab and another"**, **(2013) 1 SCC (Cri) 160**, the Hon'ble Supreme Court has observed as under:-

*"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is*

*circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.*

*58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the 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 wrongdoing that seriously endangers and threatens the well-being of the 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 the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the 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 FIR may be exercised where the offender and the 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”*

8. In view of the ratio as laid by the Hon’ble Apex Court in the catena of decisions, cited hereinabove, Compounding Application No.2 of 2022, filed by the parties, is allowed and the entire proceedings, mentioned hereinabove, pending between the parties are hereby quashed qua the present applicants on the basis of compromise arrived at between the parties.

9. Present C482 application stands disposed of, as above.

10. Pending applications, if any, also stand disposed of accordingly.

**(R.C. Khulbe, J.)**  
**Vacation Judge**

**28.01.2022**  
BS