

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL.

November 22, 2023

Criminal Misc. Application (C482) No. 1736 of 2023

Rashid Ansari
Versus
State of Uttarakhand & Anr.

.....Applicant
.....Respondents.

Counsel for the applicant.

Mr. Lalit Sharma and Mr. Haneef
Ahmad.

Counsel for the State:
Counsel for the respondent.

Mr. Saurabh Pandey, Brief Holder.
Mr. Yogesh Upadhyay

Upon hearing the learned Counsel, the Court made the following Order:

1. In the present C482 petition, compounding application being IA No. 1 of 2023 has been filed which is supported by the affidavit of the present applicant-Rashid Ansari and respondent no. 2- Naziya (complainant).
2. The applicant Rashid Ansari is present in the Court and duly identified by his respective counsel. Respondent no. 2 Nazia is also present in the Court and duly identified by her respective counsel. Xerox copies of the Aadhar card signed by the parties themselves and attested by their respective learned counsel are filed and kept on record.
3. The facts of the case are that the complainant-Naziya married with the brother of the present applicant on 04.02.2019, however, due to some differences, a first information report was lodged bearing FIR No. 26 of 2021, by the complainant-Naziya in which investigation was carried out and charge sheet was filed against the five persons, namely, Aasif (husband of the complainant), Akhtiyar (father-in-law of the complainant), Naazreen (mother-in-law of the complainant), Fareen (sister-in-law of the complainant) and Ishtiyag (brother-in-law of the complainant) in respect of offences punishable under

Sections 323, 498A, 504 and 506 IPC and under Section 3/4 of the Dowry Prohibition Act, in which cognizance was taken and Criminal Case No. 582 of 2021, State vs. Ishtiyag Ansari & others was registered. Thereafter, another charge sheet was filed against the present applicant for the offences punishable under Sections 376, 511, 498A, 323, 504 and 506 IPC and under Section 3/4 of the Dowry Prohibition Act, in which cognizance was taken and Criminal Case No. 445 of 2021, State vs. Rashid Ansari was registered.

4. Being aggrieved with the earlier charge sheet, which was filed against five persons who are the family members of the present applicant and the complainant, they preferred Criminal Miscellaneous Application (C482) No. 1606 of 2021 along with the Compounding Application No. 3 of 2023, which was allowed by the Co-ordinate Bench of this Court vide order dated 10.08.2023. The relevant extract of the order passed by the Co-ordinate Bench dated 10.08.2023, is being extracted hereunder:-

“This C482 Application was taken up on the previous date, wherein the matter was sought to be compounded, on the ground, that the parties are said to have entered into a settlement. But, in the absence of the copy of settlement being on record, the matter could not be decided finally and the learned counsel for the applicants was directed to supply the same by way of a supplementary affidavit.

In compliance thereto, the supplementary affidavit has been filed containing the terms of settlement, which has been arrived at between the parties.

The factum of execution of the settlement is a fact admitted by the complainant, as well as her husband. They have jointly made a statement before this Court, that they are agreeable to the terms and conditions given therein and rather, in compliance of paragraph no.5, she has stated that she has already received the permanent alimony of ₹5,25,000/- as well as all the streedhan, as it has been referred to in paragraph no.4 of the compromise.

Since the C482 Application emanates from a private dispute which is matrimonial in nature, coupled with the fact, that since the parties have entered into a settlement, continuance of a criminal proceeding will be nothing, but burdening litigation on the parties.

Thus, the compounding application stands allowed, and the proceedings of Criminal Case No.582 of 2021, "State Vs. Istiyak Ansari & Others", pending consideration before the Court of Judicial Magistrate, Khatima (Now, presently pending consideration before the Judicial Magistrate, Sitarganj) District Udham Singh Nagar, whereby the present applicants are being summoned to be tried for the offences under Section 323, 498A, 504, 506 of the IPC and Section 3/4 of the Dowry Prohibition Act, would hereby stands quashed. As a result thereto, the C482 Application would stand disposed of in terms of the compromise."

5. The present C482 petition is preferred by the present applicant Rashid Ansari, who is the real brother of the husband of the complainant-Nazia, challenging the entire proceedings including the charge sheet.

6. In the affidavit, filed in support of the compounding application, it is contended that due to intervention of the family friends and elderly persons of the society the parties have arrived at compromise and settled the dispute outside the court. It is further contended that according to the compromise the parties, i.e., brother of the present applicant and the complainant decided to live separately, and it was also decided that the criminal proceedings launched by each other including the present one shall be withdrawn.

7. The learned counsel for the applicant submits that the offence punishable under Section 376 IPC is with Section 511 IPC and this is nothing but an attempt to commit the crime, and, since compromise has entered pursuant to which the proceedings against the other family members

including the husband has already been quashed by the Co-ordinate Bench on the compounding application, therefore, this offence can be compounded through non-compoundable. In reference to this, the learned counsel for the applicant placed reliance upon the judgment rendered by the Hon'ble Apex Court in the case of **Kapil Gupta vs. State of NCT of Delhi & Anr., 2022 SCC online SC 1030**. The relevant paragraphs are extracted hereunder:-

"13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

17. In view of the matter, we find that though in a heinous or serious crime like rape, the Court should not formally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings."

8. The learned counsel for the applicant has also placed reliance on the judgment rendered by the Hon'ble Apex court in the case of **Sathish K. & Ors. vs. State of Karnataka, 2022 SCC OnLine Kar 899**.

9. I have perused both the judgment, and is of the view that the offence cognizable under Section 376 IPC read with Section 511 IPC can be compounded keeping in view the fact that the complainant came up with amicable settlement with other family members of the present

applicant and decided to live separately after receiving permanent alimony of Rs. 5,25,000/- as well as Stridhan, the reference of which is given by the Co-ordinate Bench in its order dated 10.08.2023, by which the proceedings against the other family members including the husband has been quashed by allowing the compounding application.

10. Apart from this, Section 498A IPC and Section 3/4 of the Dowry Prohibition Act are also non- compoundable but, since, in respect of the same offences, the compounding application of the other family members including husband has already been compounded, therefore, these offences can also be compounded, since, the present applicant is the real brother of the husband of the complainant. Rest of the offences are compoundable and the learned Brief Holder Mr. Saurabh Pandey has not disputed the same. Mr. Saurabh Pandey has also gone through the judgments relied by the learned counsel for the applicant, reference of which has been given as above, and he fairly submits that the offences cognizable under Section 376 read with Section 511 IPC, 498A IPC and Section 3/4 of the Dowry Prohibition Act can be compounded particularly keeping in view the fact that the present applicant is the real brother of the husband of the complainant, in other words the applicant is the brother-in-law (DEVAR) of the complainant.

11. In view of the above, the compounding application is allowed. The entire proceedings of Criminal Case No. 445 of 2021, State vs. Rashid Ansari, for the offences punishable under Sections 376, 511, 498A, 323, 504 and 506 IPC and under Section 3/4 of the Dowry Prohibition Act pending in the court of the learned Judicial Magistrate, Sitarganj, District Udham Singh Nagar are hereby quashed.

12. The present C482 petition is disposed of accordingly.

RAKESH THAPLIYAL, J.

Parul