



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 909 of 2024

With

Compounding Application (IA 1 of 2024)

Rajendra Mohan Kudesia Petitioner

Versus

State Of Uttarakhand and another Respondents

Presence:-

Ms. Radha Arya, Advocate for the Applicant.

Mr. G.S. Sandhu, Additional Advocate General along with Mr. Deepak Bhardwaj, Brief Holder for the State.

Ms. Shivangi Gangwar, counsel for respondent no.2.

Dated : 06 December, 2024

Hon'ble Vivek Bharti Sharma, J. (Oral)

Present petition is filed by the petitioner to quash the impugned charge sheet dated 23.10.2020 as well as cognizance/summoning order dated 03.12.2021 passed by learned Additional Chief Judicial Magistrate, Khatima, District Udham Singh Nagar in Criminal Case No. 1868 of 2021 under Sections 420, 467, 468, 471 & 409 I.P.C. as well as the entire proceedings of the aforesaid criminal case *qua* the petitioner, in view of the compromise arrived at between the parties.

2. Counsel for the petitioner and respondent no.2 would submit that the matter has amicably



been settled between the parties and now respondent no.2 does not want to further prosecute the petitioner, therefore, a joint compounding application (IA 1 of 2024) along with separate affidavits of petitioner and respondent no.2 is filed to compound the alleged offences.

3. *Per contra*, learned State counsel would vehemently oppose the compounding application on the ground that the offences alleged against the petitioner/accused are non compoundable in view of Section 359 of B.N.S.S.; that, the allegations leveled against the petitioner are very serious that the offences are not private and have a serious impact upon the Society.

In support of his submission, learned State counsel relied upon the judgment of *Daxaben Vs. The State of Gujarat and others* 2022 SCC OnLine SC 936, wherein the Hon'ble Apex Court has held that the criminal proceedings cannot be quashed in the category of serious offences, which are to be treated as crime against society and not against the individual alone, only for the reasons that a settlement has been arrived at between the parties.

4. Perused the record in view of the submissions made by counsel for the parties.

5. The Hon'ble Supreme Court in plethora of



judgments has held that though the power under Section 528 B.N.S.S. is wide, however, before exercising such power to quash criminal proceedings on the basis of compromise/settlement, the High Court has to be circumspect to the nature and gravity of the offence.

6. In the cases of *'Aparna Bhat & Others vs. State of Madhya Pradesh & Another'* in SLP No. 2531 of 2021, Hon'ble Supreme Court has held that the proceedings of the criminal case in the offences, which are against the society at large and not restricted to the personal dispute between the two individuals, cannot be quashed solely on the basis of a compromise between the accused/offender and the victim/complainant.

7. Hon'ble Apex Court in another judgment in the case *'State of Madhya Pradesh vs. Laxmi Narayan & others, (2019) 5 SCC 688*, has also observed that criminal proceedings in serious cases cannot be quashed on the basis of any financial settlement with the complainant/victim. Relevant paragraph of the said judgment are extracted hereunder:

"15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those



prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4.

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."

8. In view of the above, the compounding application is hereby dismissed.

9. In so far as the petition under Section 528 B.N.S.S. is concerned, counsel for the petitioner/accused would submit that respondent no.2 lodged an F.I.R. against the petitioner/accused alleging therein that some money embezzlement was done by the petitioner/accused in the account of the *Ganna Vikas Samiti*, at the time when he was posted as Clerk in the said *Samiti*.

10. Counsel for the State would submit that the trial court after considering the evidence on record took cognizance against the petitioner; that, the

