

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.864 of 2016**

1. Somprakash S/o Shri Bhenuram Aged About 30 Years By Caste Teli, R/o Village Kodopali, Police Out Post Bundeli, P.S. Tendukona, Civil & Revenue District Mahasamund, Chhattisgarh.
2. Tarun Kumar S/o Anirudha Chakradhari Aged About 26 Years R/o Village Jagdalla, Police Out Post Bundeli, P.S. Tendukona, Civil & Revenue District Mahasamund, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through The District Magistrate, Mahasamund, District Mahasamund, Chhattisgarh.
2. Shiv Sidar S/o Kunjram Sidar Aged About 28 Years R/o Village Karidongar, P.S. Basna, Civil & Revenue District Mahasamund, Chhattisgarh.
3. Chintaram S/o Likhan Kumar Aged About 35 Years R/o Village Sohagpur, P.S. Tendukona, Civil & Revenue District Mahasamund, Chhattisgarh.
4. Dongar Singh S/o Prem Singh Kumhar Aged About 28 Years R/o Village Jagdalla, Police Out Post Bundeli, P.S. Tendukona, Civil & Revenue District Mahasamund, Chhattisgarh.

-----Respondents

For Petitioner: Shri Sunil Sahu, Advocate.

For Respondent/State: Shri Gary Mukopadhyay, Dy. Govt. Advocate.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

12.8.2016

1. The present Petition has been preferred under Section 482 Cr.P.C by the Petitioners who were the Complainants in Crime No.177/2015 registered at P.S. Tendukona, Distt. Mahasamund.

2. The allegation of the Petitioners/Complainants in the FIR which was registered before the police station is that the Respondents accused persons, on the garb of providing private employment to the Petitioners, have taken an

amount of Rs.1,25,000/- and 1,45,000/- respectively from them. Subsequent to the payment being made, they were not provided any sort of employment which made the Petitioners to file a case of cheating against the Respondents. The case was registered and is pending for consideration before the Court of JMFC, Pithora, District Mahasamund as Criminal Case No.55/2016.

3. From the record, it reflects that the charge sheet was also filed and the charge was framed on 22.2.2016 and the matter thereafter is being proceeded for prosecution evidence. While the matter was pending consideration for the prosecution evidence, it is said that the parties have entered into a compromise i.e. the Respondents/accused persons are said to have entered into a settlement with the Petitioners and that they have returned the entire amount they had taken from the Petitioners.

4. In the light of the said settlement, an application for compounding the offence was filed before the Court below on 28.4.2016 which got rejected vide the impugned order dated 25.5.2016 on the ground that the nature of offence registered against the Respondents would not fall under the one which can be said to be a private offence or a crime against a private person but it is in fact a crime against the society and therefore, the Court below has rejected the same.

5. Against the said order dated 25.5.2016, a Revision was also preferred by the accused persons which was registered as Criminal Revision No.16/16 before the 1st Additional Sessions Judge, Mahasamund. The Revisional Court also vide the impugned order dated 30.6.2016, rejected the same holding that the nature of the offence is within the category of crime against the society and therefore, the same would not fall within the ratio laid down by

the Supreme Court in the case of **B.S. Joshi and others** reported in **(2003) 4 Supreme Court Cases 675** and **Narinder Singh & Others vs. State of Punjab & Another [2014 (6) SCC 466]**.

6. Against the rejection of the Revision Petition, the Complainants have now filed the present Petition under Section 482 seeking permission for compounding the offence.

7. Surprisingly, the accused persons who had preferred the Revision Petition before the Court below have not challenged the order passed by the Court below. It is the Complainants who have filed the present Revision Petition. The law so far as compounding of an offence is concerned, though Section 420 IPC is compoundable offence with the permission of the Court, but the guidelines laid down by the Supreme Court in the case of Narinder Singh & Others vs. State of Punjab & Another (supra) dealing with the issue in paragraph – 29 is as under:-

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings”

While laying down guidelines, keeping in view the present offence which has been registered against the Respondents, it would be pertinent to mention the observation made by the Supreme Court in the above cited judgment is as under:-

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the

power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power of the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been committed under special statute 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by

the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case, it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

8. A plain reading of the guidelines by the Supreme Court in the above paragraphs would clearly give the message that in the event of an offence not being private in nature and the nature of the offence has a mark on the society, the Court should be cautious while considering the application for compounding the said offence. In the instant case, if we look into the nature of offence, it is very clear that the Respondents, under the garb of providing employment to the Petitioners, had extracted huge amount of money from them. Such offences are on the rise in the State of Chhattisgarh as is reflected from the print and electronic media, where every second day, complaints are lodged regarding taking money on the garb of providing employment and the poor villagers are cheated.

9. The opinion of this Court stands fortified from the judgment of the Supreme Court in the case of Gian Singh vs. State of Punjab & Another and also in the case of Narinder Singh & Others vs. State of Punjab & Another (supra).

10. Accordingly, the instant Cr.M.P, being devoid of merits, the same is rejected.

Sd/-
(P. Sam Koshy)
JUDGE

Priya