

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.23 of 2016**

Gopinath Naik,
Also known as Gopinath Nair
son of Krishna Nair, Major in age,
Resident of Plot No.E-63,
Ganesh Puri Housing Board
Mapusa, Bardez, Goa. .. Petitioner

Versus

1. State
(through) Mapusa Police Station
2. Public Prosecutor
High Court of Bombay at Goa,
Panaji, Goa .. Respondents

Mr. J. J. Mulgaonkar, Advocate for the petitioner.

Ms. M. Pinto, Additional Public Prosecutor for the respondents.

CORAM :- S. B. SHUKRE, J.

Date : 17th February, 2016.

ORAL JUDGMENT :

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. The grievance of the petitioner is that a joint

application filed by the petitioner, who was being prosecuted for the offences punishable under Sections 279 and 338 of I.P.C., and the victims of crime, for compounding of the offences, was not completely granted and that the Appellate Court allowed the compounding of the offence punishable under Section 338 of I.P.C. and refused to grant permission to compound the offence punishable under Section 279 of I.P.C. on the ground that this offence is non-compoundable under the provisions of Section 320 of Cr.P.C.

4. Learned Counsel for the petitioner submits that on legal grounds, the order cannot be said to be absolutely erroneous as under Section 320 of Cr.P.C., the offence punishable under Section 279 of I.P.C. is not compoundable. But, now the law is clear and the Hon'ble Apex Court in the case of **Gian Singh Vs. State of Punjab and another**; (2012)10 SCC 303 has held that even if any offence is not compoundable under Section 320 of Cr.P.C., still the offence can be allowed to be compounded by the High Court in exercise of its inherent powers under Section 482 of Cr.P.C. He submits that certain parameters have been laid down by the Hon'ble Apex Court in this case, which if fulfilled, should result in passing the order granting permission to compound the offence by the High Court.

5. Perusal of the judgment in the case of **Gian Singh** (supra) shows that the offence punishable under Section 279 of I.P.C. is one of the offences, which has been considered to be a minor offence and which can be allowed to be compounded by a High Court if it is justified on facts and circumstances of the case. Therefore, the offence in question in this petition is covered by the ratio of the case of **Gian Singh** (supra).

6. The victims of crime, who had jointly made the application for compounding of the offences before the Appellate Court are not present before this Court. Therefore, the question of genuineness of the application would have to be answered. I do not think that for answering this question, there would be any difficulty. Reason being that the order passed on 25/01/2016 itself shows that since the learned Sessions Judge was satisfied about the genuineness of the joint application filed for compounding of offences punishable under Sections 279 and 338 of I.P.C., the learned Sessions Judge allowed compounding of the offence under Section 338 of I.P.C and for the other offence, the learned Sessions rejected the application only on the ground of absence of any power to grant it. Therefore, I have no reason to say that the application filed for compounding of said offences jointly by the

accused as well as victims of crime is not genuine.

7. Learned Additional Public Prosecutor also has no objection if the offence punishable under Section 279 of I.P.C. is allowed to be compounded. Learned Additional Public Prosecutor submits that the prosecution had also given its no objection before the learned Sessions Court.

8. In the circumstances, the Writ Petition deserves to be allowed and it is allowed accordingly. Offence punishable under Section 279 of I.P.C. is allowed to be compounded and is declared to be compounded by the accused and the victims of crime. The petitioner- accused is accordingly acquitted of the offence punishable under Section 279 of I.P.C.

9. Rule is made absolute in these terms.

S. B. SHUKRE, J.

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