

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.592 of 2016**

1. Sheetal Bhawani Gupta @ Vikram Kumar Gupta @ Vicky S/o. Bramhdev Prasad Gupta, aged about 26 years, R/o. Rajwadi Road, Jhariya, Civil and revenue District Dhabad (Jharkhand)
2. Abhishek Gupta @ Sonu Gupta S/o. Manoj Gupta, aged about 23 years, R/o. Dharmshala Road, Jhariya Civil and Revenue distt. Dhanbad (Jharkhand)

---- Petitioners**Versus**

1. State of Chhattisgarh Through Station House Officer, Out Post Manikpur (Wrongly mentioned as Police Station) Police station Kotwali Korba Distt. Korba (CG)
2. Seerath Fatima W/o. Mohammad Hasrath, aged about 35 years, R/o. SBS colony, SECL Korba Distt. Korba (CG)

---- Respondents

For Petitioners	: Shri Dharmesh Shrivastava, Advocate
For Respondent No.1/State	: Shri Ravi Bhagat, Dy. Govt. Advocate
For Respondent No.2	: None

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

11.12.2020

1. This writ petition has been filed against order dated 26.8.2015 passed by Chief Judicial Magistrate, Korba by which the application filed by the petitioners for compounding the offence under Sections 66C and 66D of the Information Technology Act, 2000 (for short 'the IT Act, 2000') has been dismissed on the ground that the said offences are not compoundable. However, the trial Court has compounded the offence punishable under Section 420/34 IPC and petitioners have been acquitted of said charge.
2. Learned counsel for the petitioners submits that by virtue of Section 77 A of the IT Act, 2000, offence under Sections 66C and 66D of the IT Act is compoundable, therefore, the trial court erred in not compounding the offence

and thereby committed illegality.

3. On the other hand, learned counsel for the State supports the impugned order passed by the trial Court. None present for the complainant, though notice has been served.

4. I have heard learned counsel for the parties, considered their submissions made hereinabove and also went through the records with utmost circumspection.

5. Section 77A of the IT Act, 2000 provides for compounding the offences which reads as under:

“77A- Compounding of offences:- A court of competent jurisdiction may compound offences, other than offences for which the punishment for life or imprisonment for a term exceeding three years has been provided, under this Act:

Provided that the court shall not compound such offence where the accused is, by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind:

Provided further that the court shall not compound any offence where such offence affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or a woman.

(2) The person accused of an offence under this Act may file an application for compounding in the court in which offence is pending for trial and the provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 shall apply.”

6. In order to consider the dispute, it would be appropriate to go through Sections 66C and 66D of the IT Act, 2000 which reads as under:-

“66C. Punishment for identity theft. - Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine which may extend to rupees one lakh.

66D. Punishment for cheating by personation by using computer resource:- Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.”

7. A careful perusal of the above stated provisions would show that if for the offence(s) committed under the said Act of 2000, the punishment prescribed is more than three years, then the offence under the IT Act are not compoundable. If the offence committed are punishable under the Act of 2000 for imprisonment for three years or less than three years, then the offences would be compoundable. As such offence under Sections 66C and 66D of the IT Act, 2000 imprisonment prescribed is three years would be compoundable offence subject to compliance of Ist and IInd provisos to Section 77A of the Act, 2000. As such order dated 26.8.2015 passed by the trial Court rejecting the prayer of the petitioners to compound the offence under Section 66C & 66D of the IT Act, 2000 is hereby set aside and the matter is remitted back to the Court of Chief Judicial Magistrate, Korba for hearing the application of the petitioners for compounding the said offences under Sections 66C & 66D of the Act, 2000 on its own merits and in accordance with law within four weeks from the date of receipt of copy of this order.

8. A copy of this order be sent to Chief Judicial Magistrate, Korba for needful and compliance.

Sd/-
(Sanjay K. Agrawal)
Judge