

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.349 of 2021**

Kamta Prasad Navendra, aged about 53 years, S/o Late
Tejram Navendra, R/o Puri, Thana Charama, Distt.
Uttar Baster Kanker (CG)

----- **Petitioner**

Versus

- 1.State of Chhattisgarh, Through Police Station Charama,
Distt. Uttar Baster Kanker (CG)
- 2.Pemin Bai, aged about 48 years, W/o Kailashnath
Bhuarya, By Caste Halba, Distt.Uttar Baster Kanker
(CG)

-----**Respondents**

For Petitioner	:	Mr.Parag Kotecha, Advocate
For Respondent No.1	:	Mr.Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

9.4.2021

- 1.Proceedings of this matter have been taken-up through
video conferencing.
- 2.Heard on admission and I.A. No. 1, application for
grant of stay.
- 3.The petitioner was charge-sheeted for offences under
Sections 406, 467, 468 and 471 of the IPC and Section
3(2)(v) of the Scheduled Castes and the Scheduled
Tribes (Prevention of Atrocities) Act, 1989
(hereinafter called as 'the Act of 1989'). During
pendency of charge-sheet, the petitioner and
respondent No.2/complainant filed an application under

Section 320(2) read with Section 320(8) of the CrPC to compound the offences. Learned Special Judge (Atrocities), Uttar Bastar Kanker by order dated 18.1.2021 only permitted the petitioner to compound the offence under Section 406 of the IPC and on 19.1.2021 learned Special Judge framed the charges for offences under Sections 467, 468 and 471 of the IPC and Section 3(2)(v) of the Act of 1989, which has been called in question by the petitioner in this writ petition.

4. Mr. Parag Kotecha, learned counsel for the petitioner, would submit that the parties have settled their dispute on the basis of compromise and therefore, the matter ought to have closed by learned Special Judge.

5. Mr. Jitendra Pali, learned Deputy Advocate General for respondent No.1/State, would submit that there is no provisions for compounding the offence under Section 3(2)(v) of the Act of 1989 and it has rightly been not compounded by learned Special Judge and furthermore, order framing charge dated 19.1.2021 is revisiable and therefore, against that part of order, the petition under Section 482 of the CrPC would not be maintainable.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove

and also went through the records with utmost circumspection.

7. Chapter XXIV of the Code includes Section 320 of the Code which provides compounding of offence, thus, compounding of an offence is statutorily provided under Section 320 of the Code.

8. A close and careful reading of Section 320 of the Code, it would appear that there are two categories of the offences under the provisions of Indian Penal Code which have been made compoundable; first category of the offence as provided under Section 320(1) of the Code, the leave of the Court for compounding of offences is not required, whereas offence as provided Section 320(2) of the Code, leave of the Court is required for compounding of offence. But in both the categories of offences, compounding of offence can take place at the instance of persons mentioned in the Third Column of the table. According to the 3rd column of the table, compounding can only be possible at the instance of the person who is either a complainant or who has been injured or is aggrieved.

9. Sub-sections (4)(a) and (4)(b) of Section 320 of the Code also reiterate the same principle that in case of compounding, the person competent to compound, must be represented in a manner known to law.

10. Sub-Section (9) of Section 320 which is relevant in this connection is set out below:

“No offence shall be compounded except as provided by this Section.”

11. The aforesaid provision came-up for consideration before the Supreme Court in the matter of Ram Lal and another v. State of Jammu & Kashmir¹, in which, their Lordships of the Supreme Court have held that sub-Section (9) of Section 320 of the Code imposes a legislative ban on compounding except as provided in this provision.

12. The above-stated proposition of law has been reiterated and followed by their Lordships of the Supreme Court in the matter of Surendra Nath Mohanty and another v. State of Orissa² and held that by virtue of legislative mandate contained in Section 320 (9) of the Code, only offence which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code can not be compounded. Para 5 of the report states as under:-

“5. In our view, submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub

1 (1999) 2 SCC 213

2 (1999) 5 SCC 238

Section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column No. 3 of the said table. Further, sub-section (2) provides that, the offences mentioned in the table could be compounded by the victim with the permission of the Court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code could not be compounded."

13. The Supreme Court in the matter of Bankat and another v. State of Maharashtra³ reiterated and followed the principles laid down in case of Ram Lal (supra) & Surendra Nath Mohanty (supra) by holding that sub-Section (9) of Section 320 specifically provides that "no offence shall be compounded Section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 to Table 2 provided under Section 320 can be compounded and the rest of the offences punishable under IPC cannot be compounded.

14. The Supreme Court in the matter of Gian Singh v. State of Punjab and another⁴ has clearly held that compounding of offences by the Criminal Court has to be in accord with Section 320 of the Code and in no other manner. Para 51 of the Code states as under:-

3 (2005) 1 SCC 343

4 (2012) 10 SCC 303

"51. Section 320 of the Code articulates public policy compounding of with regard offences. It to the catalogues the offences punishable under IPC which may be compounded by the parties without permission of the court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent offence is to dead, representatives may also compound his an legal compound the offence with the permission of the Court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional Court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner."

15. The Supreme Court in the matter of **Mukesh Kumar and others v. State of Rajasthan**⁵ following the decision of **Ram Lal** (supra), their Lordships of Supreme Court have clearly reiterated that an offence can be compounded only if it is compoundable except as provided by Section 320 of the Cr.P.C.

5 (2013) 11 SCC 511

16. In Yogendra Yadav v. State of Jharkhand⁶, their Lordships of the Supreme Court have held as under:-

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the Indian Penal Code which are non-compoundable. Needless to say that offences, which are non compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed. (Gian Singh Case Vs. State of Punjab).

17. The Constitution Bench, which decided A.R.Antulay v. Ramdas Srinivas Nayak and another⁷, has clearly held that, Code of Criminal Procedure is parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations and in the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure.

18. Thus, it is well settled that for compounding the offences, the Criminal Court has to strictly follow the mandate of Section 320 of the Code and an offence can be compounded only if it is compoundable, duly provided by Section 320 of the Code.

19. What falls for consideration is as to what should

6 2014 (8) Scale 634
7 (1984) 2 SCC 500

be the position in respect of offence punishable under the Act of 1989 ?

20. Sub-section (1) of Section 4 of the CrPC provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure.

21. Sub-Section (2) of Section 4 of the CrPC provided that all offences under any other law shall be investigated into, tried, and dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

22. Thus, sub-Section (1) of Section 4 deals with offences under the Indian Penal Code whereas sub-section (2) of the Section 4 deals with offences under any other law which would obviously include offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the compounding of offence could be brought into the category of otherwise dealing with the offences as provided in sub-Section (2) of Section 4 of the Code.

23. Thus, under sub-section (2) of Section 4 of the Code, compounding of offence under any other law or

enactment other than Indian Penal Code should be dealt with in the manner indicated in the said law or enactment, notwithstanding the embargo in sub-section (9) of Section 320 of the Code.

24. A Brief survey of the provisions of the Act of 1989 would show that there is no express provision in Act of 1989 either permitting or prohibiting compounding of the offences under the Act of 1989.

25. Now the question is whether the offence under the Act of 1989 can be permitted to be compounded in absence of any express provision in the Act of 1989.

26. In Biswabahan Das vs. Gopen Chandra Hazarika & others⁸, their Lordships of Supreme Court have held that for composition of an offence, express provision of law is necessary. The following paragraphs of the said report are relevant:-

"10. From the above it was sought to be argued that if the wrong done was of a very trivial nature the rendering of compensation was in the eye of the law sufficient to redress it and to put an end to the matter without any reflection on the character of the person charged with having done the wrong.

11. We are unable to accept the above reasoning, if a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence was permissible under the law the effect of such composition would

depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence."

27. In Gian Singh (supra), it has been held by the Supreme Court that offences punishable under the special statutes like prevention of Corruption Act are not covered by Section 320 of the Code.

28. Accordingly, offence under Section 3(2)(v) of the Act of 1989 cannot be permitted to be compounded as there is no legislative provision either in Code or Act of 1989 for compounding the said offence, as such, I do not find any illegality in order dated 18.1.2021 and accordingly it is affirmed.

29. So far as order framing charge for the above-stated offences against the petitioner is concerned, it has rightly been pointed out by learned State Counsel that the order is revisable. The petitioner is at liberty to question the order framing charge before the revisional Court in accordance with law.

30. In view of above, the present petition under Section 482 of the CrPC is dismissed reserving the aforesaid liberty in favour of the petitioner to question the order framing charge in accordance with

law. However, it is made clear that this Court has not expressed any opinion on merits of the case.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-