



ERGO

Analysing developments impacting business

COMPOUNDING OF NON-COMPOUNDABLE OFFENCES BY HIGH COURTS UNDER SECTION 482 OF CRPC- SUPREME COURT RE-AFFIRMS POSITION

22 March 2019

The issue of compounding of non-compoundable offences by a high court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure (CrPC) has been addressed by the Supreme Court of India (Supreme Court) in a catena of decisions. However, there was a conflict in law due to varying observations made by the Supreme Court. To address this conflict, a three-judge bench of the Supreme Court comprising A K Sikri J, S Abdul Nazeer J and M R Shah J, in the case of *The State of Madhya Pradesh v Lakshmi Narayan and others* [Criminal Appeal No 349 of 2019 along with Criminal Appeal No 350 of 2019], laid down guidelines for the exercise of inherent power of high courts under Section 482 of the CrPC while quashing criminal proceedings in case of non-compoundable offences.

Background

In the present case, two appeals with the same question of law were tagged together. The offences involved in the first appeal were punishable under Section 307 (attempt to murder) and Section 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code (IPC); and, in the second appeal, the offences were punishable under Section 323 (punishment for voluntarily causing hurt), Section 308 (attempt to commit culpable homicide), Section 294 (obscene acts and songs), and Section 34 of the IPC. The High Court of Madhya Pradesh (MP High Court) quashed the criminal proceedings in exercise of its powers under Section 482 of the CrPC on ground of compromise arrived between the accused and the complainant. The MP High Court relied upon the decision of the Supreme Court in the case of *Shiji Pappu & others v Radhika and another* ((2011) 10 SCC 705) wherein the offence had its origin in a civil dispute. Aggrieved by this decision, the State of Madhya Pradesh (Appellant) appealed to the Supreme Court.

A two-judge bench of the Supreme Court referred the matter to a three-judge bench, given the conflict between two decisions of the Supreme Court in *Narinder Singh v State of Punjab* ((2014) 6 SCC 466) (*Narinder Singh Case*) and *State of Rajasthan v Shambhu Kewat* ((2014) 4 SCC 149) (*Shambhu Kewat Case*).

Analysis

Section 320 of the CrPC provides for compounding of certain offences which are punishable under the IPC. Section 482 of the CrPC confers inherent powers on a high court to pass orders to (a) give effect to the CrPC; (b) prevent abuse of the process of any court; or (c) otherwise to secure ends of justice.

The Supreme Court referred to various judgements including the case of *Gian Singh v. State of Punjab* ((2012) 10 SCC 303) (*Gian Singh Case*), where the Supreme Court held that the high court must refrain from quashing criminal proceedings if the offence involved is a heinous and serious offence or when public interest is involved. However, if the offence is merely a civil matter, offences arising from commercial transactions, where the wrong is personal in nature and the parties have resolved their dispute, the proceedings may be quashed. If possibility of conviction is remote and continuation of criminal case would cause extreme injustice to the accused, high courts may quash the criminal proceedings.

The Supreme Court noted that, in the *Shambhu Kewat Case*, it was observed that the power of a criminal court is circumscribed by Section 320 of the CrPC while compounding of offences and it is guided solely by it. On the other hand, the high court is guided by the material on record to form an opinion whether to quash a criminal complaint in exercise of its power under Section 482 of the CrPC. The exercise of this power is to meet the ends of justice, although the ultimate consequence of this may be acquittal or dismissal of indictment.

In the *Narinder Singh Case*, the Supreme Court took into consideration the *Gian Singh Case* and observed that the high court can quash the criminal proceedings even in case of non-compoundable offences in exercise of its inherent power under Section 482 of the CrPC, when the parties have entered into a compromise. However, this power must be used sparingly and with caution. The Supreme Court observed that even though offence under Section 307 of the IPC is against the society, the high courts can examine whether the incorporation of Section 307 of the IPC is for name sake or there actually is enough evidence to prove it.

The Supreme Court ultimately laid down that the decision in the *Narinder Singh Case* must be read harmoniously and as a whole in the circumstances existing therein.

In light of catena of decisions and considering the law on the point, the Supreme Court laid down the following guidelines for quashing criminal proceeding in case of non-compoundable offences by high courts when invoking their inherent powers under Section 482 of the CrPC:

- **Predominantly civil nature of offence** - The power conferred on high Courts under Section 482 of the CrPC to quash criminal proceeding for non-compoundable offences under section 320 of the CrPC can be exercised where the offence involved is merely a predominantly civil and commercial matter;
- **Heinous and serious offences** - High courts must refrain from quashing criminal proceedings if the offence is a heinous and serious offence which has a serious impact on society;
- **Offences under section 307 IPC** - Even though the offence under Section 307 IPC falls under the category of heinous and serious offences and is against the society, the high courts may not rest its decision merely on the fact that the offence involved is under Section 307 of the IPC. The high court may examine whether the incorporation of Section 307 of the IPC is for name sake or there actually is enough evidence to prove it. For this purpose, the high court may examine the nature of the injury, whether the injury is on a vital body part, nature of the weapon used, etc. This would be permissible only after the evidence is collected and the charge-sheet is filed / charge is framed and / or during the trial. It is not permissible when the matter is under investigation;
- **Special statutes** - The high court must refrain from quashing the criminal proceeding based on compromise between the victim and the offender, if the offence is under a special statute like Prevention of Corruption Act or committed by public servants while working in that capacity;

- **Antecedents / conduct of the accused** - When the offences involved are private in nature, the high court, while exercising its power under Section 482 of the CrPC in respect of non-compoundable offences on ground that there is a compromise / settlement between the victim and accused, is required to consider the antecedents and conduct of the accused.

Decision

Applying the guidelines to the facts of both the cases, the Supreme Court held that the MP High Court had erred by mechanically quashing the first information report. The gravity of the offences and the conduct of the accused was not considered. Hence, both orders of the MP High Court were set aside.

Comments

This judgment fortifies the principle that if the offence is primarily civil in nature and a settlement is arrived between the parties, the high courts can compound such offences while exercising its inherent power under Section 482 of the CrPC. However, if the offences are under special statutes or against the society, high courts ought to refrain from compounding such offences merely because a compromise has been arrived at between the parties. That is to say, the guidelines laid down by the Supreme Court in the present case must be adhered to by high courts whilst exercising its inherent powers sparingly and with caution.

- *Chakrapani Misra (Partner), Kathleen Lobo (Senior Associate) and Prajakta Joshi (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2019 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com