

**HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR**

S.B : Hon'ble Mr. Justice G.S.Ahluwalia

Cr.Appeal No.396 of 2015.

Jagdish Singh Namdhari

Vs.

State of M.P.

Shri Pradeep Shrivastava, counsel for the appellant.
Shri Prakhar Dhengula, Panel lawyer for the
respondent/State.

J U D G M E N T.
(Delivered on 19th April, 2017)

This criminal appeal has been filed under Section 341 of Cr.P.C arising out of the judgment dated 16.4.2015 passed by Second Additional Sessions Judge, Gohad District Bhind in Sessions Trial No.222 of 2011 by which, the trial Court while deciding the Sessions Trial has directed that as the appellant had not supported the prosecution case, therefore, it appears that he had given false evidence, accordingly, cognizance was taken under Section 340 of Cr.P.C and it was directed that the complaint be filed before the Court of JMFC, Gohad District Bhind.

The necessary facts for the disposal of the present appeal in short are that appellant lodged an FIR against accused Kaptan Singh and Rakesh Yadav on the allegation that by misrepresenting, they had fraudulently taken an amount of Rs.1,91,800/- from the appellant. Accordingly, the police filed charge-sheet against accused Kaptan Singh and Rakesh Yadav for the offence under Sections 420/34, 467/34, 468/34 and 506 Part 2 of IPC. The charges were framed against accused persons for above mentioned offences.

Undisputed facts are that during pendency of the

trial, appellant entered into a compromise with accused Kaptan Singh and Rakesh Yadav and filed an application under Section 320 of Cr.P.C seeking permission to compound the offence. As the offence punishable under Section 420/34 of IPC was compoundable, therefore, the application was partially allowed and the accused persons namely Kaptan Singh and Rakesh Yadav were acquitted for the said charge. However, as the offences punishable under under Sections 467/34, 468/34 and 506 Part 2 of IPC were not compoundable, therefore, application in respect of those offences was rejected.

It appears that as the appellant had compromised his dispute with the accused persons, therefore, he did not support the prosecution case and turned hostile. As the prosecution could not produce any substantive evidence against accused persons namely Kaptan Singh and Rakesh Yadav, therefore, vide judgment dated 16.4.2015 passed in ST No.222 of 2011, the Second ASJ Gohad acquitted the accused persons for offence under under Sections 467/34, 468/34 and 506 Part 2 of IPC. However, while passing the judgment of acquittal, the trial Court observed that as the appellant had given false evidence, therefore, cognizance under Section 340 of IPC was taken and directed that a complaint be preferred in the Court of JMFC, Gohad District Bhind.

Being aggrieved by the said direction, appellant has filed present appeal before this Court.

This Court vide order dated 13.7.2015 stayed further proceedings before the JMFC Gohad district Bhind. Thus, it is clear that no proceedings in the trial has taken place.

It is submitted by counsel for the appellant that undisputedly, the appellant has compromised his dispute with the accused persons under Section 320 of Cr.P.C. It is a right given to the complainant under Code of Criminal Procedure to compound the offence. Thus, if the appellant has compounded the offence punishable under Sections 467/34, 468/34 and 506 Part 2 of IPC, then it cannot be said that he had done anything which was not recognized under the law. It is further submitted that application filed under Section 320 of Cr.P.C was partially allowed by the trial court and it was rejected for offence punishable under Sections 467/34, 468/34 and 506 Part 2 of IPC, mainly on the ground that the said offences are not cognizable.

So far as compromise in respect of non cognizable offences are concerned, it is submitted that the Supreme Court in the cases of **Gian Singh Vs. State of Punjab and Another (2012) 10 SCC 303** and **Narendra Singh and Others Vs. State of Punjab and another (2014) 6 SCC 466** has specifically held that if the offences are not heinous and involves commercial transaction, then offences can be allowed to be compromised. Thus, it is submitted that if a person compromises the offence during pendency of the trial, then, it cannot be said that he has done something which is not acknowledged by the law. Thus, it is submitted that under these circumstances, action under Section 340 of Cr.P.C is not warranted.

On the contrary, it is submitted by counsel for the State that the appellant had lodged an FIR making specific allegations and therefore, when he did not

support the prosecution case and turned hostile then it is submitted that he had given false statement and thus, under these circumstances, it was proper on the part of the trial court to proceed under Section 340 of Cr.P.C.

Heard learned counsel for the parties.

So far as the contention of the counsel for the appellant that before proceeding under Section 340 of Cr.P.C, it was necessary for the trial court to conduct a summary inquiry is concerned, it would be proper to consider the provisions of Section 340 of Cr.P.C which reads as under :

"340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary :-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, " Court" has the same meaning as in section 195".

From plain reading of Section 340 of Cr.P.C, it is clear that for initiating proceedings under Section 340 of Cr.P.C, following two conditions are required to be fulfilled :.

- (i). Materials produced before the Court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b) (I) of sub-section (1) of section 195 of the Cr.P.C and
- (ii) it is expedient in the interest of justice that an inquiry should be made into the alleged offence.

Merely because the person has not supported the prosecution case, cannot be ipse facto sufficient to proceed against him under section 199 and 200 of IPC but it must be shown that he has entirely given a false statement at any stage of judicial proceedings or has fabricated false evidence for the purposes of using the same at any stage of judicial proceedings. But still

the Court has to form an opinion that whether, it is expedient in the interest of justice to initiate inquiry as referred under Section 340(1) of Cr.P.C or not? In other words the court must record it's satisfaction that such an inquiry is necessary in the interest of justice. However, before forming said opinion, it is not necessary that in all cases, preliminary inquiry must be conducted. The opinion can be formed even without conducting an inquiry. However, even after forming an opinion, the court must come to a conclusion that whether it would be in the interest of justice to proceed in the matter by filing a complaint or not.

The Supreme Court in the case of **Amarsang Nathaji Vs. Hardik Harshadbhai Patel and Others State 2016 (3) MPWN 138** has held as under :

“11. No doubt, such an opinion can be formed even without conducting a preliminary inquiry, if the formation of opinion is otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction.

12. Under [Section 343](#) of the CrPC, the Magistrate has to deal with the complaint referred to in [Section 340](#) of the CrPC as if it was instituted on a police report. Therefore, on the offences referred to under [Section 195\(1\)\(b\)\(i\)](#) of the CrPC, all falling within the purview of warrant case, the Magistrate has to follow the procedure for trial of warrant cases under Chapter XIX Part A comprising of [Sections 238 to 243](#) of the CrPC. It is only in view of such seriousness of the matter, [Section 340](#) of the CrPC has provided for a meticulous procedure regarding initiation of the inquiry.”

Thus, if the facts of this case are considered then, it would be clear that the appellant had filed an

application before the trial Court under Section 320 of Cr.P.C mentioning specifically that he has compounded the offence with the accused persons during pendency of the trial and therefore, he may be permitted to compound the offence. Said application was partially allowed by the trial court in respect of the offence under Section 420/34 of IPC. So far as the offences under Sections 467/34, 468/34 and 506 Part 2 of IPC are concerned, since they were not compoundable, therefore, the application was rejected.

It is well established principle of law that if the offences alleged against the accused persons are not against the society and are not heinous in nature and if they are in respect of commercial transaction, then the complainant can enter into a compromise with the accused persons and the proceedings can be quashed on the ground of compromise.

Thus, not only offence mentioned in Section 320 of Cr.P.C can be compounded either as a matter of right or with the permission of the court but at the same time, non-compoundable offences can also be compromised with the permission of the High Court. Thus, the compounding or compromising a criminal offence is not alien to the criminal jurisprudence. In the present case, when appellant did not support the prosecution as he had entered into a compromise with the accused persons, such an act of the appellant cannot be said to be detrimental or contrary to the criminal jurisprudence.

Under these circumstances, this Court is of the view that it is not expedient in the interest of justice to proceed against the appellant. Thus, the direction given by the trial court to proceed under Section 340

of Cr.P.C against the appellant as well as filing a complaint before JMFC Gohad District Bhind is unwarranted. Therefore, the direction given by the trial court in paragraph 33 of it's judgment dated 16th April, 2016 is hereby quashed. Consequently, the complaint filed against the appellant and the further proceedings pending before JMFC, Gohad, Bhind are also quashed.

The appeal succeeds and is hereby **allowed**.

Rks.

(G.S.Ahluwalia)
Judge
19.4.2017.