

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	<u>19.07.2023</u>		<p>C482 No. 1437 of 2023</p> <p><u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Mr. Dharmendra Barthwal, Advocate, for the applicant.</p> <p>Ms. Mamta Joshi, Brief Holder, for the State.</p> <p>Mr. Paritosh Dalakoti, Advocate, for the respondent.</p> <p>The present applicant is an accused, allegedly to be involved in commission of offences under Sections 354A of IPC and Sections 67(a) and 67 of the Information Technology (Amendment) Act, 2008.</p> <p>As a consequence of the registration of the FIR, being FIR No. 41 of 2021 dated 03.02.2021, the complainant respondent No. 2, has levelled an allegation that on the basis of an acceptance of friend's request on Facebook, the present applicant had misused the same and had started sending indecent photographs and videos, which were objectionable.</p> <p>As a consequence of registration of the FIR, when the investigation was carried, the offence against the present applicant was <i>prima facie</i> found to be true by the Investigating Officer in the Chargesheet, being Chargesheet No. 1 dated 17.01.2022. Consequently, the summoning order has been issued whereby the applicant has been summoned to be tried by the Court of Chief Judicial Magistrate, Nainital in Criminal Case</p>

No. 2453 of 2022, State Vs. Neeraj Kirola.

It is these proceedings along with the Chargesheet and the summoning order which are under challenge in the instant C482 Application.

The C482 Application is accompanied with a Compounding Application No. IA/1/2023, supported by the independent affidavit of the applicant and the respondent No. 2, apart from the fact, that the contents of the said affidavit has been duly verified by their respective counsel, who represents their cause.

This Court had interacted with the complainant respondent No. 2, who has made a statement, that owing to the apology which has been expressed by the applicant and, which has been accepted by the complainant respondent No. 2, she doesn't intend to prosecute the present applicant any further for the offences, which has been complained of against him.

The learned Government Advocate opposes the Compounding Application, on the ground that the offence under Section 354A of IPC is not compoundable under Section 320 of CrPC; though the offence under Sections 67 and 67A of Information Technology Act are compoundable under Section 77A of the Information Technology Act.

Since the offence under Section 354A of IPC is not compoundable and rather it's an offence against the society, but considering the stand taken by the complainant respondent No. 2 and the statement made by her, that she has

accepted the apology as extended by the applicant, particularly since the applicant is known to the family members of the complainant, she doesn't intend to prosecute the applicant any further for the offences under Sections 354A of IPC and Section 67 and 67A of the Information Technology Act.

Owing to the aforesaid statement made by the complainant respondent No. 2, this Court is of the view, that looking to the nature and gravity of offences and also coupled with the fact, that the parties have close affinity with one another, owing to their relationship which they have developed on Facebook, coupled with the fact, that the applicant was known to the family members of the complainant, in order to maintain peace and harmony amongst themselves, the Compounding Application is required to be considered by this Court in the exercise of its powers under Section 482 of CrPC.

But, composition in itself should carry a lesson for the applicant that in future he would not engage himself in such types of offences and he should reckon how to acknowledge the sanctity of a friendly relationship.

Owing to the aforesaid, the proceedings of Criminal Case No. 2453 of 2022, State Vs. Neeraj Kirola, presently pending consideration before the Court of Chief Judicial Magistrate, Nainital, would hereby stand quashed. But, since the offence being not compoundable, the quashing of the aforesaid criminal

proceedings would be subject to the conditions, as contained hereunder:-

“1. That the applicant would be planting fifty trees in an area to be identified by the Horticulture Department of his District or Taluka to which he belongs, at his own cost.

2. The plantation of the trees would be made in the respective areas, from which he belongs, under the supervision of the Horticulture Department.

3. It is only upon the submission of the certificate of the planting of the fifty trees to be issued by the competent authority of the Horticulture Department, which has to be submitted before the competent court ceased with the criminal proceedings, its then only the proceedings would be dropped, in compliance of the today's order passed in the present C482 applications.

4. If the aforesaid compliance is not made within a period of one month from today, it will automatically result into the revival of the aforesaid criminal proceedings.

5. If at any stage, any Officer of the Horticulture Department is found to have issued a fraudulent certificate, he would be criminally dealt with in accordance with law.”

Owing to above, the matter is compounded and the C482 Application would stand disposed of accordingly.

(Sharad Kumar Sharma, J.)

19.07.2023