

ITEM NO.16

COURT NO.6
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SECTION IIA

Petition(s) for Special Leave to Appeal (Crl) No(s).8989/2010
(From the judgement and order dated 17/09/2010 in CRM No.
27367/2010 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

GIAN SINGH

Petitioner(s)

VERSUS

STATE OF PUNJAB & ANR

Respondent(s)

(With appln(s) for ex-Parte stay,exemption from filing c/c of the
impugned Judgment,exemption from filing O.T.

Date: 23/11/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s)

Mr. Rajiv Kataria, Adv.for
M/S. Delhi Law Chambers

UPON hearing counsel the Court made the following
O R D E R

Learned counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are *B.S.Joshi vs. State of Haryana* (2003) 4 SCC 675; *Nikhil Merchant vs. Central Bureau of Investigation and Another* (2008) 9 SCC 677; and *Manoj Sharma vs. State and Others* (2008) 16 SCC 1.

It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench.

(Parveen Kr. Chawla)
Court Master

(Indu Satija)
Court Master

[Reportable Signed Order is placed on the file]



REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

PETITION(S) FOR SPECIAL LEAVE TO APPEAL(CRL.) NO.8989 OF 2010

GIAN SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

..RESPONDENTS

O R D E R

Heard learned counsel for the petitioner.

The petitioner has been convicted under Section 420 and Section 120B, IPC by the learned Magistrate. He filed an appeal challenging his conviction before the learned Sessions Judge. While his appeal was pending, he filed an application before the learned Sessions Judge for compounding the offence, which, according to the learned counsel, was directed to be taken up along with the main appeal. Thereafter, the petitioner filed a petition under Section 482, Cr.P.C. for quashing of the FIR on the ground of compounding the offence. That petition under Section 482 Cr.P.C. has been dismissed by the High Court by its impugned order. Hence, this petition has been filed in this Court.

Learned counsel for the petitioner has relied on three decisions of this Court, all by two Judge Benches. They are *B.S.Joshi vs. State of Haryana (2003) 4 SCC 675*;

Nikhil Merchant vs. Central Bureau of Investigation and Another (2008) 9 SCC 677; and Manoj Sharma vs. State and

-2-

Others (2008) 16 SCC 1. In these decisions, this Court has indirectly permitted compounding of non-compoundable offences. One of us, Hon'ble Mr. Justice Markandey Katju, was a member to the last two decisions.

Section 320, Cr.P.C. mentions certain offences as compoundable, certain other offences as compoundable with the permission of the Court, and the other offences as non-compoundable vide Section 320(7).

Section 420, IPC, one of the counts on which the petitioner has been convicted, no doubt, is a compoundable offence with permission of the Court in view of Section 320, Cr.P.C. but Section 120B IPC, the other count on which the petitioner has been convicted, is a non-compoundable offence. Section 120B(criminal conspiracy) is a separate offence and since it is a non-compoundable offence, we cannot permit it to be compounded.

The Court cannot amend the statute and must maintain judicial restraint in this connection. The Courts should not try to take over the function of the Parliament or executive. It is the legislature alone which can amend Section 320 Cr.P.C.

We are of the opinion that the above three decisions require to be re-considered as, in our opinion, something

which cannot be done directly cannot be done indirectly. In our, prima facie, opinion, non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. Hence, the above three decisions do not appear to us to be correctly decided.

-3-

It is true that in the last two decisions, one of us, Hon'ble Mr. Justice Markandey Katju, was a member but a Judge should always be open to correct his mistakes. We feel that these decisions require re-consideration and hence we direct that this matter be placed before a larger Bench to reconsider the correctness of the aforesaid three decisions.

Let the papers of this case be placed before Hon'ble Chief Justice of India for constituting a larger Bench.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
NOVEMBER 23, 2010

.....J.
[GYAN SUDHA MISRA]