
(2011) 11 UK CK 0170

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 464 of 2007

Anand Singh Bisht and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Motor Vehicles Act, 1988 — Section 177, 181, 192, 196, 207

Citation : (2012) 1 NCC 272 : (2012) 1 UC 248 : (2011) 2 UD 670

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesh Kumar Gupta, J.—By way of this petition, the applicants have sought to invoke the powers of this Court u/s 482 CrPC and to quash the chargesheet dated 10.4.2006 submitted against the applicants in Case Crime No. 36/2006, PS Lansdown, District Pauri Garhwal, on the basis of which the Special Sessions Trial No. 9/2006, State v. Pradeep Kumar & Others has been registered u/s 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (for short, the Gangsters Act), which is pending trial in the court of Special Judge, Gangsters Act, Pauri Garhwal.

2. Having heard learned Counsel for the applicants and the Brief Holder for the State, it appears that all the three applicants were nabbed at Lansdown Gumkhata Kotdwar Tiraha by the police patrolling party of Lansdown police station on 21.1.2006 at about 9 pm, when the applicants were allegedly transporting 200 bottles of illicit English liquor for selling the same in the hills of Garhwal. The said liquor was being transported without any license in a white Maruti 1000 Car bearing registration no. DL4CC-3332. The police registered three different cases against all the three applicants, which are as under:

(i) Case Crime No. 35/2006 u/s 60/72 of the Excise Act;

(ii) Case Crime No. 36/2006 u/s 3(1) of the Gangsters Act;

(iii) Case Crime No. 37/2006 u/s 177/181/192/196/207 of the Motor Vehicles Act.

3. After the investigation, the police submitted chargesheets against all the applicants in all the three crimes mentioned above. The applicants have filed the instant petition challenging only the chargesheet filed against them u/s 3(1) of the Gangsters Act.

4. The stand in the petition is that even if the allegations made against the applicants are taken at their face value, there is no scope for holding that the applicants committed an offence punishable under the Gangsters Act. At the most, it may make out a case under the Excise Act. While arguing the case, the learned Counsel for the applicants has put forth very lucid interpretation of the definitions of the words "Gang" and "Gangster" as envisaged in the UP Act No. 7 of 1986 i.e. the Gangsters Act (also applicable to the State of Uttarakhand). It would be relevant to reproduce the definition of the "Gang" as envisaged u/s 2(b) of the Gangsters Act, which reads as under:

"Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

5. It would also be relevant here to read the definition of "Gangster" as adumbrated in Section 2(c) of the Gangsters Act, which is reproduced below:

"gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities.

6. Learned Counsel for the applicants has very strenuously argued that although the applicants were apprehended by the police while they were allegedly transporting 200 bottles of illicit English liquor for selling the same in the hills of Garhwal with the object of gaining pecuniary advantage, nonetheless they cannot be said to be acting by any violence, or threat or show of violence, or intimidation, or coercion, as has been envisaged in the definition of "gang" given in Section 2(b) of the Gangsters Act. Learned Brief Holder for the State drawn the attention of this Court towards the words/expression "or otherwise" used in this Section after the words "by violence, or threat or show of violence, or intimidation, or coercion" while defining the word "gang". Learned Brief Holder intends to argue that the words "or otherwise" cover the activity of transportation of the illicit liquor as an anti-social activity even if no act of violence or threat or coercion has been committed by the applicants while carrying out the said activity. This Court is unable to agree with the contention of the learned Brief Holder because it is the finest principle of law of interpretation

that in such matters the last like words "or otherwise" are to be construed with the assistance of rule of ejusdem generis, meaning thereby that the scope of the words "or otherwise" is limited to the sense, which is applicable to the words which have been used by the Legislature hitherto using the words "or otherwise" in the last. Therefore, the words "or otherwise" cannot be interpreted in such a manner as has been argued by the learned Brief Holder for the State, and the same cannot be stretched to give any meaning to the alleged activity of the applicants so as to make them accused under the Gangsters Act.

7. Moreover, the definition of "gang" refers to indulgence in anti-social "activities". In the same manner, the definition of "gangster" in Section 2(c) also uses the word "activities". The use of plural "activities" clearly indicates that a single act of anti-social activity cannot turn a person into a gangster. The applicants can be said to be the members belonging to a group called "gangster" only when they are indulged in more than one anti-social activity, and not on the basis of single anti-social activity. As such, plurality of the anti-social activity is must, as has also been laid down by the Hon'ble Allahabad High Court in the judgment rendered in the case of State of U.P. v. Phool Mian & Others in Government Appeal No. 339/1989 (decided on 17.4.1998).

8. In the instant case, the applicants were nabbed by the police when they were allegedly transporting the illicit liquor without license in their Maruti Car. Police registered three cases, one under the Excise Act, another under Motor Vehicles Act and the third one under the Gangsters Act. Violation of the provisions of the Motor Vehicles Act cannot be termed as an anti-social activity, which is in the spirit of the Gangsters Act. Therefore, on the basis of only one alleged anti-social activity i.e. alleged transportation of liquor without valid license, the applicants cannot be chargesheeted under the Gangsters Act. Learned Counsel for the applicants has placed his reliance upon a Full Bench Judgment of Allahabad High Court rendered on 5th March, 1987 in case of Ashok Kumar Dixit v. State of U.P Civil Misc. Writ Petition No. 4562/1986 etc., wherein the Hon'ble Allahbad High Court has elaborately discussed the meaning of the words "gang" and "gangster" with the maxim *actus non facit reus nisi mens sit rea*, and has made a very fine distinction between the non-mental elements of a given crime from the mental elements thereof and held that *actus reus* and *mens sit rea* are analytical tools useful in exposition of the criminal law. So, in the above scenario, the applicants, on the basis of transporting the illicit liquor for the purpose of gaining pecuniary benefit, cannot be termed as Gangsters, as has been adumbrated in the definition quoted above.

9. In view of the above, this petition has merits and it deserves to be allowed. The petition is accordingly allowed. The impugned chargesheet dated 10.4.2006 submitted against the applicants in Case Crime No. 36/2006, PS Lansdown, District Pauri Garhwal, which is registered as Special Sessions Trial No. 9/2006, State v. Pradeep Kumar & Others u/s 3(1) of the Gangsters Act, pending in the court of Special Judge, Gangsters Act, Pauri Garhwal, is hereby quashed.

10. Registry is directed to inform the court concerned accordingly.