
(2010) 06 UK CK 0037
In the Uttarakhand High Court

Anil Kumar Raghav and Others

APPELLANT

Vs

State of Uttarakhand and Shri Prikshit Singh, Inspector C.B.
C.I.D

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 167, 193, 195, 203, 211

Citation : (2010) 06 UK CK 0037

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the petitioners have sought quashing of the proceedings of Criminal Case No. 2938 of 2004 State v. Anil Kumar Raghav and Ors., relating to offences punishable u/s 193, 211, 218, 195, 203, 167, 465, 471, I.P.C., Police Station Gangnagar, District Haridwar, pending in the court of Chief Judicial Magistrate, Haridwar. Also, petitioners have sought quashing of the order dated 09.06.2010 passed by Sessions Judge, Haridwar in Criminal Revision No. 393 of 2009 affirming the order dated 12.11.2009, passed by the Chief Judicial Magistrate, Haridwar.

3. Brief facts of the case are that on 12.04.1995 one Ajay Mittal was abducted by some miscreants in vehicle bearing registration No. HR-02/8066 and looted. The police registered Crime No. 40 of 1995 at Police Station Laksar (District Haridwar) relating to offences punishable u/s 364/395 I.P.C., and investigation was made. During investigation, encounter is said to have been shown by the police and Crime No. 74 of 1995 was registered at Police Station Gangnagar, relating to offence punishable u/s 307 I.P.C., against the miscreants and it was shown that Ajay Mittal was got freed from the miscreants. However, during

investigation of the aforesaid Crime No. 74 of 1995 it was alleged that the incident of encounter shown by the police was fake, on which Crime No. 133 of 1999, was registered against the petitioners who are policemen serving in the State of Uttar Pradesh, relating to offences punishable u/s 193, 211, 218, 195, 203, 167, 465, 471 I.P.C. The inquiry was conducted by C.B C.I.D. However, after investigation final report was submitted by the Investigating Agency with the finding that no offence is said to have been committed by the present petitioners (members of the police force). But, it appears that the cognizance was taken by the Magistrate and the cognizance order was challenged by the present petitioners earlier by moving Criminal Misc. Application No. 444 of 2004, which was dismissed on 19.08.2009, with the observation that question of sanction has not been raised before the trial court.

4. It is brought to the notice of this Court that after the afore said order dated 19.08.2009, the question of validity of sanction was raised before the trial court which was rejected on 12.11.2009. It is further submitted that the revisional court erred in law in upholding the order dated 12.11.2009 passed by the Magistrate.

5. I have gone through the impugned order passed by the Magistrate on 12.11.2009 and the order dated 09.06.2010 passed by Sessions Judge, Haridwar in Criminal Revision No. 393 of 2009. On going through said order, this Court finds that the courts below have erred in law in observing that the sanction is not required.

6. Admittedly the petitioners are the members of the police force belonging to the State of Uttar Pradesh. Incident relates to the period, before creation of State of Uttarakhand. Presently the petitioners are posted in the district of Gautam Budh Nagar, Ghaziabad, Muzaffarnagar and Meerut. The entries made by the police officers at the Police Station were in discharge of their public duties relating to the alleged encounter with the miscreants. The Investigating Agency has found no offence made out against the petitioners. Whether the alleged encounter was fake or genuine, is a question of fact and it cannot be said that the encounter was not in discharge of the public duty of the policemen. That being so, it was necessary for the prosecution to obtain the sanction as required u/s 197 of Cr.P.C. Since the petitioners are public servants who can be removed from service only with the sanction of the State Government, and valid sanction can be given in the present case only by the State Government of Uttar Pradesh. The letter dated 16.10.2003(copy of Annexure-3 to the petition) issued by additional Secretary of Government of Uttarakhand to Director General on Police of Uttarakhand relating to the matter of sanction also indicates that in the present case sanction can be accorded by the State of Uttar Pradesh only. Said letter is not a sanction issued by the competent authority. It merely directs the prosecution to obtained sanction from the Government of Uttar Pradesh.

7. Therefore, in the above circumstances, in view of the principle of law laid down by this Court in Yegendra Nath Arora v. State of Uttaranchal 2006 (2) U.D.

640 the impugned criminal proceedings can not proceed further without the valid sanction which is still wanting for more than six years.

8. Accordingly, the petition u/s 482 of Cr.P.C is allowed. The impugned order dated 09.06.2010 passed by Sessions Judge, Haridwar in Criminal Revision No. 393 of 2009, and order dated 12.11.2009 passed by Chief Judicial Magistrate, Haridwar, are set aside. The proceedings of Criminal Case No. 2938 of 2004 State v. Anil Kumar Raghav and Ors., relating to offences punishable u/s 193, 211, 218, 195, 203, 167, 465, 471, I.P.C., Police Station Gangnagar, District Haridwar, pending in the court of Chief Judicial Magistrate, Haridwar, are hereby quashed.