
(2019) 04 UK CK 0070

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 527 Of 2010

Anjana Chaudhary And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 406, 504, 506
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 UK CK 0070

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Akhil Kumar Sah, Manisha Rana Singh

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been filed for quashing the summoning order and proceeding in the Criminal Case No.1086 of 2010, State Vs. Satender Chaudhary and Another under Section 406, 506, 504 I.P.C., pending in the court of learned Chief Judicial Magistrate, Udham Singh Nagar, District Udham Singh Nagar.

2. The factual matrix necessary for resolving the controversy is within a very short compass. An F.I.R. was filed on 8.11.2009 at 6:05 p.m. at Police Station Rudrapur, District Udham Singh Nagar by respondent no.3 under Section 406, 504 and 506 I.P.C. According to it, the petitioners took a loan of Rs. 7,35,000/- from the first informant (the respondent no.3 herein) on different dates, on the assurance that they would return it, after a while. But, the amount was not returned and when demanded, the petitioners abused and threatened the respondent no.3 to her life. Based on it, investigation was carried out and a chargesheet under Section 406, 504 and 506 I.P.C. submitted to the Court of

Chief Judicial Magistrate, Udham Singh Nagar and the proceedings of Criminal Case No.1086 of 2010 (hereinafter referred to as 'the case') instituted.

3. In the case, cognizance was taken. The summoning order and the proceedings of Criminal Case No.1086 of 2010 are challenged in the instant petition.

4. What is interesting to notice is that respondent no.3 also filed a similar F.I.R. in District Rampur, which was lodged on 9.11.2009 at 11:30 a.m at Police Station Bilaspur, District Rampur, Uttar Pradesh. It was lodged under Section 406 and 506 I.P.C. It was also investigated and a chargesheet under Section 406 and 506 I.P.C. was filed in the court of Chief Judicial Magistrate, Rampur, in which cognizance had already been taken on 11.02.2010.

5. The respondent no.3 simultaneously had taken recourse in two jurisdictions for the same cause. Notices were issued in this matter. State has filed counter affidavit. Respondent no.3 was served with the notice, according to the office report dated 25.06.2010, 25.09.2010 and 30.03.2017. Respondent no.3 did not appear in this proceeding.

6. Heard learned counsel for the parties and perused the records.

7. Learned counsel for the petitioners would argue that continuance of the proceedings of the case is nothing but abuse of process of law as the content of the F.I.R. in itself does not disclose commission of any offence. If there is any cause, it is nothing but a civil cause, which might give respondent no.3 to take recourse in civil jurisdiction. No case under Section 406 I.P.C. is made out. It is also argued that since in the matrimonial dispute between respondent no.3 and her husband, the petitioners are with the husband of respondent no.3, therefore, false F.I.R. has been lodged. It is argued that the summoning order and the proceedings of the case deserve to be quashed and the instant petition allowed.

8. Learned Additional Government Advocate fairly concedes that offence under Section 406 I.P.C. is not made out from the perusal of the F.I.R. She also very fairly conceded that two F.I.R.s in two States for the same cause cannot be entertained.

9. Section 406 I.P.C. provides for punishment for criminal breach of trust. Criminal breach of trust is defined under Section 405 I.P.C., which, interalia, provides as hereunder:-

405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

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10. According to the content of the F.I.R itself, the petitioner took Rs.7,35,000/- on different dates as a loan from respondent no.3. Out of the Rs.7,35,000/-, a sum of Rs.5,35,000/- is stated to have been given by way of cheques and Rs.2 Lakhs, in cash. The money is not stated to have been entrusted with the petitioner. It is also not the case of respondent no.3 that the petitioner had dishonest intention of not returning the amount since inception. It is also not the case that the respondent no.3 was cheated and dishonestly induced by the petitioner to deliver the loan amount. A bare perusal of the F.I.R. reveals that it was purely a personal transaction. What is stated may be a case of civil nature, but in the instant case, there is lack of any criminality on the part of the petitioner.

11. In the case of State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335, Hon'ble Supreme Court has laid down the test for exercising the inherent power of the High Court under section 482 of the Code. The Court, inter alia, held as hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In the case of Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, Hon'ble Supreme Court elaborated the principles to be considered by the High Court while exercising the jurisdiction under Section 482 of the Code of Criminal Procedure. The Court, interalia, held as hereunder:-

"27.1

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3

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27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence."

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13. As stated hereinbefore, in the instant case, what the F.I.R. reveals may be a civil wrong, but with no element of criminality. It does not satisfy the basic ingredients of criminal offence. Therefore, this Court is of the view that continuance of the proceedings of the said case will definitely amount to abuse of process of law, therefore, the summoning order and the entire proceeding of the case deserve to be quashed.

14. Accordingly, the instant petition under Section 482 of the Code is allowed. The summoning order dated 20.03.2010 and the entire proceeding of Criminal Case No.1086 of 2010, State Vs. Satender Chaudhary and Another under Section 406, 506, 504 I.P.C., pending in the court of learned Chief Judicial Magistrate, Udham Singh Nagar, District Udham Singh Nagar is hereby quashed.