

(2012) 02 UK CK 0012

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 144 of 2007

Arvind Mohan Badoni and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 323, 380, 427, 452, 457

Citation : (2012) 02 UK CK 0012

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesesh Kumar Gupta, J.—By means of this petition, the prayer has been advanced to quash the proceedings of criminal complaint case No. 508/2007 pending in the court of Special Judicial Magistrate-II, Dehradun (original No. 1171/2004 instituted in the court of Chief Judicial Magistrate, Dehradun) and also the order of cognizance passed on 4.12.2007 against all the petitioners for the offence of Sections 323, 504 and 506 IPC.

2. It is pertinent to mention that none has turned up on behalf of private respondent No. 2 despite there being sufficient service upon him. So, this Court has given hearing to learned counsel for the petitioners and learned AGA for the State.

3. Having heard learned counsel for the petitioners, it transpires that they run a Kids School in the building which is owned by the private respondent and his family. This way, private respondent is the landlord and the petitioners are the tenants in the premises. Civil litigations at various levels were instituted ever since 1982 to strive the vacation of the building but landlord could not succeed. Landlord and his family members endeavoured to pressurize the tenant Sri Badoni for vacation of the building by otherwise means through the allegation of offence under Sections 457/380 IPC, wherefor the report was lodged bearing

crime No. 19/1995 at P.S. Kotwali, Dehradun on 7.1.1995. After investigation, a final report was submitted, but on the protest petition advanced by Mr. Badoni, a criminal complaint case No. 1690/2005 was registered by learned Magistrate and after making enquiry u/s 200 and 202 Cr.P.C., the order of cognizance was passed on 9.11.2005 for the offence of Sections 457/380 IPC against Madan Mohan Srivastava (father of private respondent). The Court has been apprised that the said order of cognizance was challenged by Sri Srivastava by means of a petition u/s 482 Cr.P.C., which is still pending before the Court for hearing.

4. Sri Srivastava, facing the above criminal litigation in the court of the Magistrate, filed the impugned complaint on 29.7.2004, narrating the incident of 26.7.2004, therein raising several allegations to the tune of Sections 323/504/506/427/452 IPC against the instant petitioners. It was alleged therein that on 26.7.2004, the complainant's old father Madan Mohan Srivastava, along with his elder brother, came to meet the complainant. After sometime, the petitioners Arvind Mohan Badoni, his wife Smt. Satyawati and son Praveen Mohan Badoni, besides 2-3 other persons, came in the complainant's house and committed the said incident.

5. Learned counsel for the petitioners drew the attention of the Court towards Annexure SA2 of the supplementary affidavit filed by the petitioners, which is a photocopy of affidavit of Madan Mohan Srivastava, submitted by him in a civil litigation (SCC No. 54/1992), pending between the parties. This affidavit was sworn on 24.7.2003 and it has been deposed therein that Madan Mohan Srivastava is so indisposed since September 2001 that he is incapable even rising from bed. He has been said to be bed ridden at the age of 75 years.

6. Here, it can be inferred that at the time of alleged incident of July, 2004, Sri Madan Mohan Srivastava must be aged about 76 years whereas Sri Arvind Mohan Badoni must be 62 years of age. It is just unbelievable that a man, aged about 62-63 years, i.e. Mr. Arvind Mohan Badoni along with his wife Smt. Satyawati, who must also be of like age and his son Parveen Mohan Badoni, as well as 2-3 other unknown persons, entered the house of complainant and assaulted not only him but also his wife Smt. Anita and his old father Madan Mohan Srivastava. This entire story does not inspire confidence and appears to be a counterblast of the criminal complaint case No. 1690/2005, launched at the protest petition of Sri Arvind Mohan Badoni against the private respondent. This is a clear-cut abuse of process of law, which cannot be permitted to proceed any further, inasmuch as, the same would just be a wastage of time of Court while dealing with baseless allegations.

7. For the reasons, as aforesaid, the petition merits acceptance and is liable to be allowed. It is, accordingly, allowed. Impugned order of cognizance dated 4.12.2007 and also the proceedings of criminal complaint case No. 508/2007, titled in the first paragraph of this judgment, are hereby quashed.