
(2011) 12 UK CK 0070

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 79 of 2006

Ashraf

APPELLANT

Vs

State of Uttaranchal and another

RESPONDENT

Date of Decision : 06-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482

Citation : (2011) 12 UK CK 0070

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesesh Kumar Gupta, J.—At the very outset, it is pertinent to mention that none has turned up on behalf of respondent no. 2 Upendra Nath Soti, even in the revised call. He was not being represented hitherto for the last two previous dates too, so this Court rendered hearing to learned counsel for the applicant.

2. This Criminal Misc. Application has been moved u/s 482 Cr.P.C. to quash the order of cognizance dated 03.02.2005 passed by Judicial Magistrate, Haridwar in Criminal Case No. 1197 of 2004 titled as Upendra Nath Soti Vs. Ashraf.

3. The background facts of the case are that Upendra Nath Soti, who is a septuagenarian, filed the instant complaint on dated 22.12.2004 with the allegations that on 14.12.2004 at about 08.00 a.m., when he was leisurely sitting in his orchard situated in Mohalla Pandeywala, noticed a commotion in the corner of the grove. When he moved to that direction, he found that accused Ashraf and his companions were cutting trees of Poplar, Mango and Bamboo. When he (Upendra Nath Soti) prevented them to do so accused Ashraf hurled filthy abuses and assaulted him with baton. He was rescued by Madhukant Soti and Munshiram Vashisht, who were sitting beside him at the relevant time. Had these two witnesses not been present there, he would certainly be killed at the hands

of accused Ashraf and his associates. Upendra Nath Soti sent an application to the Senior Superintendent of Police, Haridwar on 16.12.2004 through registered post narrating the entire incident but in vain, so he got himself medically examined on 17.12.2004 and filed the instant case.

4. Learned Magistrate recorded the statement of complainant (Upendra Nath Soti) u/s 200 Cr.P.C. and his two witnesses namely Madhukant Soti and Munshiram Vashisht u/s 202 Cr.P.C. on 07.01.2005 and then passed impugned order of cognizance.

5. It has been argued on behalf of applicant that virtually this orchard is owned by Ashraf and not by Upendra Nath Soti. It was purchased by his ancestor Wahid Hasan from Om Prakash, father of the complainant on dated 02.11.1953. This grove bears Khasra No. 1609/1, which is a part of big land bearing Khasra No. 1608/1, admeasuring 2 Bigha 13 Biswa Khewat No. 307. On the strength of a WILL executed on 02.06.1997 by Hazi Abdul Wahid, who was grand father of Ashraf and Sharafat, this land was mutated in the name of applicant. He roped the grove thereupon. Besides, he filed original suit no. 203 of 2002 in the court of Civil Judge (Junior Division) on 23.07.2002 against Upendra Nath Soti seeking a prohibitory injunction against him for not interfering in his possession over the land.

6. Therewithal, attention of this Court has been drawn to the nature of the injuries, which are very simple in nature and manifests only abrasions and contusions. Doctor had opined that these injuries are 1-2 days old. This medical examination was done on 17.12.2004, which connotes that these injuries could have been caused at the most on 15th or 16th December, 2004 while the incident has been narrated of dated 14.12.2004 at 08.00 a.m.. So it gives a reflection that these injuries are not the outcome of any real incident but these have been manipulated and the complaint is result of wreaking vengeance arising out of civil dispute claiming ownership upon the land aforementioned.

7. For the reasons explicated above, this petition has force and deserves to be allowed. The petition is allowed. Impugned order of cognizance dated 03.02.2005 and criminal case no. 1197 of 2004 pending in the court of Judicial Magistrate, Haridwar are hereby quashed.