
(2003) 04 UK CK 0001

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 116 of 2002

Balbir Singh and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 204, 482

Citation : (2004) CriLJ 1169 : (2003) 2 UC 938 : (2003) 1 UD 212

Hon'ble Judges : Irshad Hussain, J

Bench : Single Bench

Advocate : K.S. Verma, for the Appellant; Lok Pal Singh, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Irshad Hussain, J.—The present criminal miscellaneous application u/s 482 of the Code of Criminal (hereinafter for short "Code") has been filed for quashing the criminal proceedings in criminal case. No. 56 of 2001 after setting aside the summoning order dated 16-11-2001 passed by I Additional Chief Judicial Magistrate, Hardwar and also judgment and order dated 29-4-2002 passed by learned Sessions Judge, Hardwar in criminal revision No. 20 of 2002.

2. Heard Sri K.S. Verma, learned counsel for applicants and Sri Lok Pal Singh, learned counsel for respondent No. 2 and learned A.G.A. for State.

3. Respondent No. 2 complainant filed an application u/s 156(3) of the Code before the learned Magistrate alleging that on 23-8-2001 at about 11 a.m., eight accused named therein and who are the petitioners in the present petition trespassed into his agricultural plot and assaulted him. Out of these eight, one Suresh Kumar gave a knife blow and another named as Rajbeer fired a shot from, pistol which fortunately did not hit the said victim. As a result of the assault he sustained injuries. The report of the incident was not lodged by the police and a registered letter to the S.S.P., Hardwar also did not bear any fruits.

The learned Magistrate passed an order directing the concerned S.O., police station to register the F.I.R. and investigate the same. After investigation final report was submitted on the ground that no witness claimed to have seen the occurrence. Respondent No. 2 complainant preferred a protest petition alleging that the investigating officer has not properly made the investigation and the statements of the witnesses u/s 161 of the Code were not correctly recorded. Learned Magistrate after hearing the parties and on consideration of the case diary, did not agree with the conclusion of the investigating officer and passed an order to summon the accused. This order dated 16-11-2001 is impugned in this petition. A revision was preferred by the petitioners before the learned Sessions Judge who after hearing the parties did not find any merit in the same and dismissed it by the impugned Judgment and order dated 29-4-2002. The petitioners thereafter filed the present petition.

4. Learned counsel for the petitioners submitted that there was no-sufficient material on record to prima facie make out a case of assault, criminal intimidation etc. against the petitioners and the learned Magistrate made an error in passing the summoning order. It was also pointed out that the learned Magistrate has also mentioned in the impugned order that one of the eye witness named as Jaipal Singh claimed to have not heard noise of the firearm shot and it was, accordingly argued that there was no reliable evidence to prima facie establish the allegations of the F.I.R. and there was thus no occasion to pass the summoning order.

5. On the other hand learned counsel for the respondent argued that the order passed by the learned Magistrate was within his jurisdiction because it is well settled that once final report is submitted after investigation by the police one of the option available for the learned Magistrate was to disagree with the conclusion and straightway summon the accused to stand trial for the offences alleged therein, and therefore there is no merit in the petition to set aside the said order and quash the criminal proceedings. Learned counsel also submitted that the petition u/s 482 of the Code was not legally maintainable in view of the fact that the revision preferred by the petitioners u/s 397 of the Code against the summoning order had already been dismissed on merit by the learned Sessions Judge by judgment and order dated 29-4-2002.

6. Having considered the submissions of the learned counsel it may be pointed out at the outset that the present petition has legal force and is fit to be allowed for appropriate relief. Perusal of the summoning order dated 16-11-2001, Annexure-5 to the affidavit of the petitioners make it obvious that the complainant himself gave out that the investigating officer had not recorded the statements of the witnesses correctly and further that the statements of all the witnesses named in the FIR were not recorded. In a situation like this in a criminal trial when the witnesses from the side of the prosecution are produced some practical anomalies are created and it becomes difficult to summon material witnesses u/s 311 of the Code when an application to this effect is

moved on behalf of the prosecution because the defence normally take a plea that the statements of such witnesses were not recorded during the investigation. In the instant case in the protest petition complainant made an allegation that the investigating officer had not correctly recorded the statements of the witnesses u/s 161 of the Code and further the learned Magistrate observed that statements of all the witnesses were not recorded by the investigating officer. In a situation like this the difficulty as pointed out above need to be foreseen when the matter is, taken up for considering the protest petition. In such situation when the investigating officer has not properly investigated the case the learned Magistrate should consider the need to adopt the option to treat protest petition as complaint and to proceed with it under the provisions as contained in Chapter XV of the Code, so that the learned Magistrate would have an opportunity to carefully scrutinize evidence brought on record and the learned Magistrate may even himself put questions to the complainant and his witnesses to elicit answer to find out truthfulness of the allegations or otherwise and then examine whether there was sufficient material to summon the accused to stand trial. It also appear proper to take up such an option when as many as eight persons are arrayed as the assailants although simple and superficial injuries are detected on the person of the complainant-injured by the medical officer. On the face of the facts of the case it will be expedient to refer to a decision of the apex Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put question to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

7. As mentioned above and considering the allegations made in the FIR, the large number of the assailants and few simple injuries on the person of the injured, the other option available to the learned Magistrate would have properly been exercised.

8. The learned Sessions Judge in the revision petition also did not take into account this aspect of the matter and I am inclined to find favour with the submissions of the learned counsel for the petitioners that the revision petition was also not considered in proper legal perspective. For these reasons the

summoning order need to be set aside so that the learned Magistrate may have opportunity to consider the case in this perspective before passing any order on the protest petition.

9. So far as the maintainability of the present petition is concerned it need to be pointed out that it is open to the High Court to scrutinize orders passed by subordinate Courts in exercise of its inherent powers u/s 482 of the Code. The view expressed by the Apex Court in Jitender Kumar Jain Vs. State of Delhi and Others, need reproduction here :

"We are of the view that the High Court failed to distinguish its separate powers u/s 397 of the Code of Criminal Procedure as also u/s 482 of the said Code. It is true that a second revision petition does not lie before the High Court when one is dismissed by the Court of Session. Still the Court of Session is a Court subordinate to the High Court and, as such, its proceedings are open to scrutiny by the High Court in exercise of its inherent powers u/s 482 of the Code of Criminal Procedure. The High Court in these circumstances should not have dismissed the petition of the appellant on the premise as it has done. It is otherwise open to the High Court not to interfere in a matter when examining a case u/s 482 of the Code of Criminal Procedure. In this view of the matter, we set aside the impugned, order of the High Court and remit the matter back to the High Court for reconsideration."

10. Thus in view of the above decision of the Hon"ble Supreme Court it has to be held that powers u/s 482 of the Code can be exercised despite dismissal of the revision petition filed against the summoning order passed by the learned Magistrate by the petitioners before the Court of Session.

11. In view of above the petition has merit and is hereby allowed. The impugned order dated 16-11-2001 passed by learned Magistrate and Judgment and Order dated 29-4-2002 passed by learned Sessions Judge are hereby set aside. The case is remitted to the learned Magistrate, who shall pass order afresh after considering the protest petition preferred by respondent No. 2-complainant and also after giving him opportunity of hearing against the final report according to law and in the light of the observations made above.