

(2019) 08 UK CK 0058

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 551 Of 2013

Balraj Singh Lamba (Rtd. Col.) & Others

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 506

Citation : (2019) 08 UK CK 0058

Hon'ble Judges : N.S. Dhanik, J

Bench : Single Bench

Advocate : M.S. Pal, Manoj Bhatt, Farida Siddiqui, R.V.S. Khokher

Final Decision : Dismissed

Judgement

N.S. Dhanik, J

1. This Criminal Miscellaneous Application, under Section 482 CrPC, is preferred to quash the chargesheet dated 18.6.2012, summoning order dated 23.6.2012 and the entire proceedings of Criminal Case No. 990 of 2012, State v. Balraj Singh Lamba & Others, under Section 506 IPC, pending in the Court of Judicial Magistrate, Kashipur, District Udham Singh Nagar.

Facts of the case, necessary to be noted for deciding the present case, are that the complainant/respondent no. 2 is the real brother-in-law (Sala) of the applicant no. 1. Applicant no. 2 is the real brother-in-law (Sala) of the applicant no. 1. Applicant no. 3 is the son of the applicant no. 1. On 21.5.2012, respondent no. 2 lodged an FIR against the applicants with the allegations that applicants 1 and 2 along with their six other companions, armed with weapons, came at his hospital, a portion of which was also being used as residence by the respondent no. 2 and his family members; mother-in-law of the respondent no. 2 (i.e. mother of applicant no. 1) was residing with him; applicant no. 1 started exerting pressure on his mother to withdraw the report lodged by her against the

applicant no. 1 and was extending threatening to her; meanwhile Rajveer (applicant no. 2) and his companions were moving around the house of complainant; complaint telephoned to the police and gave information about the incident; when the accused persons saw the police coming, they fled away from the spot; while leaving the spot, applicant no. 1 threatened the complainant's son to kill him and the applicant no. 3 telephoned the complainant's son and threatened him.

Police made investigation and submitted the chargesheet against the applicants. Thereafter the Court below summoned the accused applicants to face the trial for the offence under Section 506 IPC.

Learned Counsel for the accused applicants contended that the respondent no. 2 lodged the FIR against the applicants as a counter-blast to the various criminal and civil cases lodged by the applicant no. 1 against the complainant/respondent no. 2.

Learned Counsel for the complaint/respondent no. 2 argued that the present proceedings are not counterblast to any case. He further argued that disputes questions of fact are involved in the present dispute and on the basis of allegations made in the FIR, a prima facie case is made out against the applicant.

Having heard learned Counsel for the parties and on perusal of the material on record, it transpires that specific allegations have been made in the FIR and after investigation, police also submitted the chargesheet. Disputed questions of fact are involved in the present dispute. I am also of the opinion that the allegations made in the complaint, if taken at their face value and accepted in their entirety, prima facie make out a case against the accused applicants.

Hon'ble Apex Court in *Prashant Bharti v. State of NCT of Delhi*, (2013) 9 SCC 293, has observed that in order to determine the veracity of a prayer for quashing the criminal proceedings raised by an accused under Section 482 CrPC, the High Court should analyze (i) whether the material relied upon by the accused is sound, reasonable and indubitable; (ii) whether the material relied upon by the accused is sufficient to reject and overrule the factual assertions contained in the complaint; (iii) whether the material relied upon by the accused cannot be justifiably refuted by the prosecution/complainant; and (iv) whether the trial would result in an abuse of process of the court and hence, would not serve the ends of justice?

In my considered opinion, the answer to none these questions is in affirmative and, therefore, this Court is not inclined to quash the proceedings by exercising its power under Section 482 CrPC.

It is also settled law that power under Section 482 CrPC requires great caution in its exercise. A Constitution Bench of the Hon'ble Apex Court has elaborately discussed such scope in the case of *Inder Mohan Goswami & Another v. State of Uttaranchal & others*, (2008) 1 SCC (Cri) 259, and has held that inherent power

under Section 482 CrPC can be exercised: (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers. However, the inherent power should not be exercised to stifle a legitimate prosecution.

Learned Senior Counsel for the applicants relied upon a judgment of the Hon'ble Apex Court in *Vikram Johar v. State of Uttar Pradesh*, in Appeal No. 759 of 2019 (arising out of SLP (Crl.) No.4820/2017). In this case, the Hon'ble Apex Court, following the principles enumerated by it in *Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44, and holding that the ingredients of Section 506 are not made from the complaint, discharged the accused, inter alia, for the offence under Section 506 IPC.

As is stated hereinabove, the allegations made in the complaint do prima facie make out a case against the accused applicants and hence the authority relied upon by the learned Senior Counsel is not attracted in the present case.

In view of what has been set forth above, I do not find any force in this criminal miscellaneous application. Consequently, the present C482 petition is dismissed. Interim order, if any, stands vacated. Inform the Court concerned accordingly.

It is made clear that any observation made by this Court is only for the purpose of deciding the present C482 petition and the same shall not prejudice the trial court while deciding the case on merit.