
(2010) 09 UK CK 0066

In the Uttarakhand High Court

Case No : Restoration Application No. 733 of 2010, Delay Condonation
Application No. 946 of 2010 in Criminal Application No. 656 of 2005

Bhawan Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Penal Code, 1860 (IPC) — Section 147, 34, 427, 428

Citation : (2010) 09 UK CK 0066

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—For the reasons stated, delay condonation application is allowed. Delay in filing the restoration application is condoned.

2. Restoration application is also allowed in view of the reasons stated in the affidavit filed in support of the restoration application. Order dated 7.7.10 dismissing the petition for want of prosecution is recalled. Petition is restored to its original number.

3. Also heard on merits of the petition.

4. This petition, moved u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed for quashing the judgment and order dated 6.8.2005 passed by the Sessions Judge, Chamoli in Criminal Revision No. 21 of 2005 Sudarshan Singh and Ors. v. State of Uttaranchal.

5. Heard learned Counsel for the parties and perused the material on record.

6. In brief, the facts of the case are that petitioner/complainant sent an application through registered post to Patwari Talwari, Tehsil Tharali, Distt. Chamoli, stating therein that he is a member of Scheduled Caste and is residing

at Khasra No. 1030 and the land adjacent to it since last 40 years. On 1.7.2000, the accused/respondents damaged the crops standing on the land and also took the same along with them. On the basis of this application, the concerned Patwari registered the case u/s 427, 147/34, 428 IPC. The matter was investigated and after completing the investigation, charge sheet was filed on 1.3.2004, on the basis of which the concerned Magistrate on 28.4.2004 took cognizance against the accused and summoned them. After that the respondents/accused appeared before the Magistrate and on 25.11.2004, an application was moved u/s 468 Cr.P.C. stating therein that the application has been given by the complainant after the lapse of period of limitation and as such the proceedings may be quashed. On that application, learned J.M. Karanprayag vide order dated 21.2.2005 found that though the cognizance has been taken after lapse of the period of limitation but the cognizance has been taken by his predecessor and the order is a final order and as such, the learned Magistrate came to the conclusion that the summoning order cannot be quashed and accordingly the application of the accused/respondents was rejected. Against that order dated 21.2.2005, the respondents/accused preferred a revision which was allowed by the Sessions Judge, Chamoli vide judgment and order dated 6.8.2005 and the order passed by the Magistrate summoning the accused as aforesaid, was quashed. Hence this petition.

7. Sri Pankaj Purohit, learned Counsel for the petitioner/complainant argued that the revisional court was not correct in allowing the revision and quashing the proceedings against the respondents. I do not find any force in this argument. As per the admitted facts of the case, the incident took place on 1.7.2000 and then the application was sent to the concerned Patwari by post on the basis of which CHIK FIR was prepared on 3.9.2000 by Patwari Talwari, Tehsil Tharali and after the investigation, charge sheet was filed by the concerned Patwari on 1.3.2004 on the basis of which learned Magistrate took cognizance on 28.4.2004. Each of the Sections 147, 427 and 428 IPC provides for two years' imprisonment. In this context, as per Section 468 Cr.P.C., the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Now coming back to the facts of the case, the cognizance had to be taken within three years. But in the present case, it has not been done and the learned Magistrate proceeded to summon the accused by taking cognizance against them after expiry of period of limitation. Even the charge sheet has been filed after three years. As such in view of the foregoing facts and circumstances of the case, I find that the revisional court was perfectly justified in quashing the order dated 21.2.2005 passed by the J.M. Karanprayag thereby taking cognizance and summoning the accused u/s 427, 428, 147 and 34 IPC and I do not find any illegality or irregularity committed by the revisional court.

8. For the reasons as aforesaid, C482 petition is devoid of merits and is hereby dismissed.