

(2011) 01 UK CK 0069

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 379 of 2005

Deepak Gupta

APPELLANT

Vs

State of Uttaranchal (now State of Uttarakhand)

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 379, 427

Citation : (2011) 1 UC 549

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : B.M. Pingal, holding brief of Mr. Hari Om Bhakuni, present for the Petitioners/ Applicants. 2, for the Appellant; S.S. Adhikari, A.G.A., present for the Respondent State. Mr. Deepak Bisht, Advocate, holding brief of Mr. Umesh Kalakoti, Advocate, present for the Respondent No. 3/ complainant., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Prafulla C. Pant, J.—This is Delay Condonation Application No. 1422 of 2010, moved on behalf of the Petitioners, for condonation of delay in filing the Restoration Application MCRC No. 755 of 2010, for restoration of Criminal Misc. Application (C-482) No. 379 of 2005, which was dismissed for non-prosecution by this Court, on 23rd of July 2010.

2. Heard.

3. The eleven days delay in filing the restoration application is sufficiently explained in the affidavit filed by Shyam Dutt Pandey (petitioner No. 2). The Delay Condonation Application No. 1422 of 2010, is allowed. Delay in filing the restoration application is condoned.

4. Also, heard on Restoration Application MCRC No. 755 of 2010, and perused the affidavit accompanying the application.

5. The absence on the date fixed is sufficiently explained in the affidavit filed with the restoration application. In view of the principle of law laid down in *Madhumilan Syntex Limited and Ors. v. Union of India and Anr.* A.I.R.2007 S.C.W. 1971, the restoration application is allowed, on the condition that the parties shall be heard on merits today, in the petition filed u/s 482 of Code of Criminal Procedure. The petition u/s 482 of Code of Criminal Procedure. stands restored on the condition, as above.

6. Heard on the petition filed u/s 482 of Code of Criminal Procedure., which is registered as Criminal Misc. Application (C-482) No. 379 of 2005, whereby the Petitioners have challenged the proceedings of Criminal Complaint Case No. 181 of 2005, *Jeevan Singh Khetwal v. Deepak Gupta and Ors.* relating to offences punishable u/s 427, 379 of I.P.C., pending in the court of Judicial Magistrate, Bageshwar.

7. Learned Counsel for the Petitioners submitted that admittedly as apparent from the copy of the criminal complaint (Annexure 8), complainant Jeevan Singh Khetwal is the contractor, and the Petitioners who were arrayed as accused are Engineers of the Public Works Department of, the State. It is further submitted that it is alleged by the complainant in the criminal complaint that the accused got demolished the construction work done on the road by the complainant (contractor), and the material was also removed from the spot. Copies of the notices issued by the Public Works Department to the complainant / Respondent No. 3 are filed with the petition showing that the contractor did not complete the work in terms of the agreement with the department. It is argued on behalf of the Petitioners that without compliance of Clause (b) of Sub-section (1) of Section 197 of Code of Criminal Procedure., the Magistrate had no power to take cognizance in the matter. The provision referred provides that no court shall take cognizance relating to an offence alleged to have been committed by a public servant while acting or purporting to act in discharge of his duties, without previous sanction from the concerned Government.

8. Admittedly, in the present case no sanction was sought nor given, and the Magistrate has committed jurisdictional error in taking cognizance of the offence alleged against the Petitioners.

9. Therefore, the petition u/s 482 of Code of Criminal Procedure. is allowed. The proceedings of impugned Criminal Complaint Case No. 181 of 2005. *Jeevan Singh Kethwal v. Deepak Gupta and Ors.* relating to offences punishable u/s 427, 379 of I.P.C., pending in the court of Judicial Magistrate, Bageshwar, are hereby quashed. (Misc. Application No. 4679 of 2010 also stands disposed of).