
(2010) 07 UK CK 0108
In the Uttarakhand High Court

Ganesh Joshi and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 482
Parliament (Prevention of Disqualification) Act, 1959 — Section 2, 3
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 308

Citation : (2010) 07 UK CK 0108

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—By way of this petition, u/s 482 Cr.P.C. the petitioners have prayed for quashment of the charge sheet filed by S.H.O. P.S. Dalanwala, Dehradun against the petitioners and further prayed for setting aside the summoning order passed by C.J.M. Dehradun, in Criminal Case No. 591/2005, State v. Ganesh Joshi and 18 Ors., under Sections 147, 148, 149, 34, 326, 325, 353, 332, 336, 307 I.P.C. and Section 2/3 P.P.D. Act.

2. Brief facts of the case are that a first information report was lodged against certain persons belonging to a particular political party on 13.12.2002 at 7.45 P.M. at P.S. Dalanwala, u/s s 147, 148, 353, 332, 336, 326, 307 I.P.C. and Section 7 Criminal Law Amendment Act, as well as Section 2/3 of P.P.D. Act, stating therein that on 13.12.2002 at about 1 p.m. there was an ultimatum given by the B.J.P. Political Party to the government for "Gherao of the Vidhan Sabha" and on account of the same thousands of men and women assembled at Bannu School, Race Course, Dehradun and from there a procession started towards Vidhan Sabha. At Rispana bridge there was a barrier and the procession started making slogans at that barrier. The procession thereafter tried to start ahead and the police obstructed them. The police tried to disperse the agitated procession and during the course of dispersing the agitated mob, tear-gas as well as water

from the Fire Brigade vehicle was also used and thrown towards the crowd. This caused a stampede at the spot and it is alleged in the F.I.R. that certain police personnel sustained injuries in that incident.

3. After the institution of first information report, the matter was investigated by the police and on completion of the investigation, the charge sheet was submitted by the police against 19 persons. The Magistrate after receiving the charge sheet, took the cognizance in the matter and summoned all the 19 persons, as an accused, who were shown in the charge sheet.

4. Feeling aggrieved by the order passed by the Magistrate, thereby summoning the petitioners to face the trial, this petition has been filed before this Court, for quashment of the charge sheet, as well as for setting aside the cognizance order passed by the Magistrate concerned.

5. Heard Sri Rajendra Kotiyal, assisted by Sri Ravi Babulkar, learned Counsel for the petitioners and Sri S.S. Adhikari, learned A.G.A. for the State and perused the record.

6. It is important to mention here that in the first information report several leaders of the political party (B.J.P.) have been nominated therein and it has also been alleged that the assembled people, who were thousands in number, could not be controlled by the police and police thereafter used tear-gas as well as the water flow from the Fire Brigade Vehicle at the crowd. In this incident, it is also alleged that several persons from the police side sustained injuries on their persons.

7. It is further to mention here that in the first information report two legislatures were nominated in the column of the accused persons. Those legislatures are Sri Harbans Kapoor and Sri Trivendra Singh Rawat. The first information report is absolutely silent as to out of these 19 persons, against whom the charge sheet has been submitted, who raised the slogans or abetted the crowd to be aggressive and caused the injuries on the person of police personnel, as no role has been assigned to any of the persons named in the first information report or in the charge sheet submitted by the police. The charge sheet also indicates that the names of these two legislatures do not find place therein and no reason has been given by the investigating officer as to why these two persons were dropped later on. The charge sheet also does not indicate anywhere that there was insufficient evidence against these two legislatures and that was the cause of their names being dropped in the charge sheet. The charge sheet, therefore, appears to be a result of malicious prosecution with an ulterior motive for wreaking vengeance with a view to spite the petitioners due to some grudge best known to prosecution.

8. The Hon''ble Apex Court in a decision reported in 1992 SCC (Cri) 426 State of Haryana and Ors. v. Bhajanlal and Ors., has expressed several categories of cases wherein inherent power u/s 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of process of court or otherwise to secure the ends of

justice and out of several categories formulated by the Hon''ble Ape Court, two categories for the purpose of this case to be reproduced here would be relevant-

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. Undoubtedly, it is a case in which several persons (thousands in number) belonging to a particular party assembled at a particular place in order to make procession for meeting their demands, but there is nothing on the record which may suggest that any of the 19 persons, shown in the charge sheet, were responsible for abetment, to commit any crime or they had assembled over there to form an unlawful assembly. Mere presence in an unlawful assembly cannot render a person liable, unless there was a common object and he was actuated by that common object and that object is one of those set-out in Section 147 I.P.C. The Hon''ble Apex Court in a case reported in State of Karnataka Vs. Chikkahottappa @ Varade Gowda and Others, , has held that-

Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 I.P.C. may be different on different members of the same assembly.

10. The Hon''ble Apex Court in an another decision reported in 1977 SCC (Cri) 404 State of Karnataka v. Muniswamy and others, has also held that - "in the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the court or that the ends of justice require that the proceeding ought to be quashed."

11. As far as the offence u/s 307 I.P.C. is concerned, for which the charge sheet has been submitted by the investigating officer, I am of the view that again a close scrutiny of the material available before me, it cannot be said that actually utterance of words by the people assembled at the scene of the occurrence cannot be said that those slogans were raised for either committing murder or for culpable homicide not amounting to murder. The offences Under Sections 308 and 307 I.P.C. are not to be inferred merely for a song or for raising some slogans by a political party for his opponents. Words, in the shape of slogans, even for which evidence is true, as a fact are uttered by people not with a mind to commit murder, but in order to gather courage for themselves and to

demoralize the opponent, will not bring the offence u/s 307 I.P.C. in any case.

12. Further I am of the view that in this case the investigating officer has not tried to bring true version of the incident and with the result he dropped several persons while submitting the charge sheet and added some new persons therein whose names were not mentioned in the first information report. The Hon''ble Apex Court in a case reported in 1974 SCC (Cri) 250 Jamuna Chaudhary and Ors. v. State of Bihar, has held that-

The duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth.

13. In this case the State has filed the counter affidavit and the investigating officer of this case while filing the counter affidavit has nowhere averred therein that what is the specific role of the accused persons during the course of the incident. The contents of paragraph-5 of the counter affidavit shows that the members of the assembly were having Lathis, Dandas and stones in their hands and they started pelting stones upon the police party, but neither in the first information report, nor in the charge sheet, it has been mentioned as to who abetted the crowd to attack at the police party, by pelting stones or by using Lathis, Dandas, on account of which it is alleged that police party sustained injuries on their persons. This incident is alleged to have taken place in the year 2002 and the police could complete the investigation of this case after more than three years and in the year 2005 the charge sheet could be submitted. I am quite surprised that during this long period of more than three years, the investigating officer could not collect any specific evidence, which must be found to be sufficient for bringing the guilt of the accused persons to home.

14. The Magistrate also, while summoning the petitioners in a criminal case, appears not to have applied his mind to the facts of the case and the law applicable thereto. Summoning of accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. The Magistrate has to examine the nature of allegations made in the complaint and the evidence collected by the police in support thereof in order to reach to a definite conclusion as to whether the evidence is sufficient for the prosecution to succeed in bringing charge home to the accused. In the instant case it appears to me that the Magistrate also did not scrutinize the papers submitted by the police carefully before summoning the petitioners as an accused to face the trial. I am of the definite view that the prima facie case, as has been put forward by the prosecution, is not made out against the petitioners. It would certainly be one of those cases where there is an abuse of process of law and the courts, hence this Court also should not shy away in exercising its jurisdiction under the provision of Section 482 Cr.P.C. The purpose of exercising the power u/s 482 Cr.P.C. is to advance justice and not to frustrate it. I am of the view that in case if in this type of case the trial is permitted to continue against the petitioners, the same would be a futile exercise and sheer wastage of time of the courts. I am also of the

view that no flagrant injustice is going to be caused in this case , if the cognizance order dated 12-04-2005, passed by C.J.M. Dehradun, in Criminal Case No. 591/2005, State v. Ganesh Joshi and 18 others, thereby summoning them to face trial u/s s 147, 148, 149, 34, 326, 325, 353, 332, 336, 307 I.P.C., Section 7 Criminal Law Amendment Act, and Section 2/3 P.P.D. Act, as well as the charge sheet submitted by the police against the petitioners, are quashed.

15. For the reasons stated above, the petition succeeds and is allowed. The cognizance order dated 12.04.2005, passed by C.J.M. Dehradun in Criminal Case No. 591/2005, State v. Ganesh Joshi and 18 others as well as the charge sheet submitted by the police against the petitioners Under Sections 147, 148, 353, 332, 355, 326, 307 I.P.C., Section 7 Criminal Law Amendment Act and Section 2/3 P.P.D. Act, are hereby quashed.