
(2012) 04 UK CK 0052

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 661 of 2010 with Stay
Vacation Application No. 1033 of 2010

Gopal Singh

APPELLANT

Vs

State of Uttarakhand and Bablu @ Kailash

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482

Penal Code, 1860 (IPC) — Section 308, 323, 325, 427, 504

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(X)

Citation : (2012) 04 UK CK 0052

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Mohd. Azim, for the Appellant; Atul Bhatt, Advocate for the
respondent no.2. and Shri M.A.Khan, Brief Holder for the State, for the
Respondent

Final Decision : Dismissed

Judgement

Hon"ble Prafulla C. Pant, J.—In both these two petitions, moved u/s 482 of Code of Criminal Procedure, 1973, the petitioners have sought quashing of the proceedings of Criminal Complaint Case No. 267 of 2010, Bablu @ Kailash vs. Kailash and others, relating to offences punishable u/s 323 and 504 of I.P.C., and one punishable u/s 3 (1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending in the court of Chief Judicial Magistrate, Nainital. Heard learned counsel for the parties, and perused the affidavits and counter affidavits.

2. Brief facts of the case are that on 31.12.2009, in Village Patalia within the limits of Police Station Kaladhungi, an incident said to have taken place between the petitioners and respondent no.2 Bablu @ Kailash, Pradeep and Sonu. A First Information Report was got lodged on 02.01.2010, by petitioner no.3 Anup Singh against respondent no.2 Bablu @ Kailash, and two others namely Pradeep and

Sonu, relating to offences punishable u/s 325, 308, 427 and 506 of I.P.C. On said report after investigation, charge sheet appears to have been filed against respondent no.2 Bablu @ Kailash and three others namely Pradeep, Sonu and Jaipal, for their trial relating to offences punishable u/s 325, 427 and 506 of I.P.C. Meanwhile, it appears that respondent no.2 Bablu@ Kailash also filed criminal complaint dated 15.02.2010, giving the cross versions of the incident naming petitioners Gopal Singh, Puppy, Anup Singh, Ganesh, Raju, Jeevanand Padaliya and Bhopal, as accused. On said complaint after recording the statement of complainant u/s 200 of Cr.P.C., and that of witnesses u/s 202 of Cr.P.C., the Magistrate appears to have summoned the accused to face the trial in respect of offences punishable u/s 323 and 504 of I.P.C., and one punishable u/s 3 (1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned counsel for the petitioners submitted that the impugned criminal complaint is counter blast to the criminal case initiated by petitioner no.3 Anup Singh against respondent no.2 Bablu @ Kailash and others. In this connection, attention of this court is drawn to the copy of the First Information Report lodged by Anup Singh, and the copy of the charge sheet filed by the police. On the other hand, on behalf of the complainant, learned counsel for the respondent no.2 drew attention of this Court to the injury reports of Pradeep and Bablu, which are annexed as annexure-1 to the counter affidavit filed on behalf of the respondent no.2.

4. Considering the papers on record and injury reports of both the sides, it cannot be said that the impugned criminal complaint is simply abuse of process of law. In the opinion of this Court, it is a case where the trial court will have to examine which party was aggressor to come to the conclusion as to the innocence of the petitioners. This Court in its jurisdiction u/s 482 of Cr.P.C., cannot be examine such factual disputes on the basis of half baked evidence before it. Therefore, without expressing any opinion as to final merits of the case, pending before the trial court, both the petitions are dismissed with the observation that if the petitioners namely Gopal Singh, Puppy, Anup Singh, Ganesh, Raju, Jeevanand and Bhopal surrender before the court concerned, their bail application shall be heard and disposed of without unreasonable delay, keeping in mind that the cross case is pending against respondent no.2, and others.