

(2011) 07 AHC CK 0180

In the Allahabad High Court

Case No : Criminal Miscellaneous Application Nos. 550,598/2005 & Criminal Miscellaneous Application No. 598/2005

Hansraj

APPELLANT

Vs

State of Uttaranchal & Another

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Penal Code, 1860 (IPC) — Section 392, 504, 506

Citation : (2011) 07 AHC CK 0180

Hon'ble Judges : Servesch Kumar Gupta, J

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—Both these criminal miscellaneous applications challenge the same cognizance order dated 2.8.2005, passed by the Judicial Magistrate, Haridwar. Hence, these are being decided by this common judgment and order.

2. By the aforesaid cognizance order dated 2.8.2005, passed in Criminal Complaint Case No. 178/2005, Harish Kakker v. Deshraj & Others, the learned Magistrate has summoned the accused applicants to face the trial for the offence punishable under Section 392, 504 & 506 IPC.

3. I have heard learned Counsel for the parties and perused the papers on record.

4. Facts, in brief, are that the respondent no. 2 Harish Kakker filed a complaint before the Chief Judicial Magistrate, Haridwar alleging that on 10.7.2005, at about 6 pm, when he along with his companion Sardar Harjeet Singh, was coming from Haridwar SIDCUL area to his home at Saharanpur in his Maruti Zen Car No. UP11B8899, the accused applicants, all of a sudden, came in front of them in their own Maruti Car near Chinmay Degree College at Ranipur (Haridwar). The accused applicants had knives in their hands. They started to forcibly rob the complainant and his companion. While one of the accused Hansraj watched the incident sitting in his Maruti Car, which was used by the

applicant persons, the other accused persons snatched the golden chain from the neck of the complainant and the golden rings from the fingers of the complainant and his companion Sardar Harjeet Singh. Besides, golden bracelet from the wrist of Sardar Harjeet Singh was also snatched. In addition, Rs. 16,000/ in cash was also looted abusing the complainant and his companion. They also demanded rupees four lakhs from the complainant and his companion. Meanwhile, Jeetu Khurana and Babbu Sharma, who were known to the complainant, came from behind and on watching this incident, they stopped at the place of occurrence. Noticing that Jeetu Khurana and Babbu Sharma have come at the spot, the accused persons escaped from the spot with the threat that if the police is informed about the incident, then they all will be killed.

5. Learned Magistrate, after recording the statement of the complainant under Section 200 CrPC and the statement of the witnesses Sardar Harjeet Singh (companion of the complainant) and Jeetu Khurana under Section 202 CrPC, passed the cognizance order and summoned the accused applicants, as stated above.

6. Having heard the respective arguments of learned Counsel for the parties, it appears that Deshraj, at the time of alleged incident, was an old man of 79 years and Hansraj was 87 years old at that time. They both are brothers and rest of the accused persons are their near or distant relatives. It was revealed before the court that the complainant and his companion are property dealers. In fact, the applicants sold some of their land to Harish Kakker in the year 2003. The complainant wanted to purchase the adjoining land of Hansraj, for which he did not agree. So, the complainant, in order to exert pressure upon Hansraj and other applicants, have made out this cock and bull story.

7. It is pertinent to mention that in the counter affidavit filed by Harish Kakker, in para 9 thereof, he has denied the factum of sale deed, which he purchased from Hardeep Singh, Laxmi Das and Hansraj, even though the copy of sale deed has been filed by the applicants along with this petition. So, it is apparent on the face of the record that the affidavit of the complainant is false. Besides that, the applicants have also filed a supplementary affidavit and has annexed therewith an information as Annexure No. 1, received under the Right to Information Act, which reveals that the Maruti Zen Car No. UP11B8899, mentioned by the complainant in his complaint, is actually not a Maruti Zen car, but the same is a Bazaz Chetak Scooter, registered in the name of one Rajendra Chaudhary. This information has been given by ARTO, Saharanpur. So, this factum also reflects that the story is fabricated and false.

8. It is also notable that all the applicants as well as the complainant hail from the same city Saharanpur. Had the applicants wanted to commit this type of incident against the complainant, they would have done so in Saharanpur itself, which was rather easier for them, and they had no need to chase them in the city of Haridwar.

9. Yet another important factor is that Hansraj, who executed the sale deed in favour of the complainant as mentioned above, had made an application to SSP on 6.7.2005 against the complainant regarding his conduct. Smt. Krishna, a married daughter of Hansraj, also made a similar application on 25.7.2005 against the complainant. Therefore, these entire facts, discussed above, indicate that the complainant had enough reason to implicate the applicants in false and fabricated case. The entire story has been cooked up by the complainant.

10. The contention of the learned Counsel for the complainant that the Magistrate has recorded the statement of the complainant under Section 200 CrPC and statement of the witnesses under Section 202 CrPC, averring the contents of the complaint, and then has taken the cognizance against the applicants, does not have any substance because in the above stated backdrop of the matter, if any ex parte statement is made on oath in the court of a Magistrate, an innocent person could not be made to suffer, particularly when the true facts have been brought before the Court.

11. In view of my foregoing discussion, the impugned cognizance order cannot sustain in the eye of law and deserves to be quashed. Consequently, both these criminal miscellaneous applications, under Section 482 CrPC, are allowed. Impugned cognizance order dated 2.8.2005 passed by the Judicial Magistrate, Haridwar in Criminal Complaint Case No. 178/2005 and the entire proceedings subsequent thereto are hereby quashed.