

(2013) 01 UK CK 0033

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 23 of 2013

Harish Chandra Suyal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Citation : (2013) 1 NCC 465

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Vivek Shukla and Mr. Bhuvnesh Joshi, for the Appellant; P.S. Danu, Brief Holder, for the Respondent

Judgement

Servesh Kumar Gupta, J.—Since all these seven petitions involve the same controversy arisen out of the identical FIRs and chargesheets, albeit in different crime numbers, but for the same offences, therefore, these petitions are being decided by this common judgment and order. Relevant facts of the case are that FIRs were lodged on 11.4.2004 at the instance of some political person Smt. Janki Bisht, who was a member of Jila Panchayat, Pali, District Pithoragarh. She made the complaint to the police station Ascot, District Pithoragarh regarding certain irregularities which were allegedly committed by the persons named in those reports. These accused persons were the Village Panchayat Officer, Village Development Officer, Gram Pradhan, Junior Engineer, Account Clerk and like such. The work pertained to the construction of a small tank and a narrow canal in the area where for an amount to the tune of Rs. 2,40,000/- was sanctioned. It is not available instantly as what amount was released from the Government out of the sanctioned amount, but the work was completed and it was assessed by a technical committee to be worth Rs. 1,80,000/-. That technical committee comprised of Junior Engineer and Assistant Engineer of the Public Works Department of the Government. However, without taking the assessment of the technical audit cell/committee, FIRs were promptly lodged by the Station Officer at the instance of Smt. Janki Bisht and subsequently, the accused persons were

chargesheeted for the offences u/s 467, 468, 471, 409, 420, 120B IPC. The sum and substance recorded in the chargesheets was that a forged muster roll was prepared by way of mentioning the names of few labourers and all these accused persons had their complicity in grabbing the Government money.

2. When the chargesheets were sent to the Senior Prosecuting Officer for submission in the court, he perused the entire evidence collected by the Investigation Officer and submitted his report that there was no substantial evidence available against the accused persons to file the chargesheets in the court and recommended for restraining from submission of the same. However, somehow his opinion was overlooked and chargesheets were filed in the court concerned. Later on the matter was again highlighted and the opinion of another In-charge Prosecuting Officer, Pithoragarh was sought by the District Magistrate. After making meticulous analysis and examination of all the evidence collected by the Investigation Officer, he commented that the FIRs were lodged at the instance of Smt. Janki Bisht, the then member of Jila Panchayat in the development block Kanali Chheena belonging to Congress Party, on the basis of the allegations which have no substance and without entrusting the matter to the technical cell for its report. After lodging of the FIRs, the technical committee was constituted which comprised of Junior Engineer and Assistant Engineer of PWD, Pithoragarh. They enquired and made physical verification of each and every work done and found all the work in order. Even the quality-wise they did not find the work as sub-standard. They further expressed their view that as per the norms, the misappropriation of the Government money was not found and the documents which were produced were exactly in accordance with the work done at the spot. It was further found that all the labourers were paid their wages at the Government rate and no forged document was found to be prepared. So, In-charge Prosecuting Office also concurred the view expressed by the Senior Prosecuting Officer made hitherto. It was adverted that the prosecution case was too weak to be presented in the court for trial and it was further opined that perhaps the investigating agency had not done the physical verification at the spot. So, he recommended that all the cases against the applicants accused be withdrawn from the court in the public interest.

3. When this two concurrent opinions of the Sr. Prosecuting Officer and In-charge Prosecuting Officer at different times were taken by the District Magistrate, Pithoragarh, then he wrote a letter to State Government on 15.11.2010, which is Annexure 5 to the petition, recommending withdrawal of Criminal Cases No. 714 to 720. Government, accordingly, issued an order on 9.12.2010, Annexure 6 to the petition, stating that after due consideration, it has decided to withdraw these cases pending before the Judicial Magistrate, Didihat, District Pithoragarh. In compliance of the same, Prosecuting Officer moved the application (Annexure 7) before the said court u/s 321 Cr.P.C., which was rejected by the Magistrate vide order dated 27.1.2011. Thereafter District Magistrate, Pithoragarh directed the District Government Counsel (Criminal) to prefer revision in the court of Sessions against the orders of Judicial Magistrate. Revisions were filed

accordingly, but the same were dismissed vide judgment and order dated 17.10.2012 passed separately in each of the seven criminal revisions. Hence, all these petitions.

4. Having heard learned Counsel for the applicants as well as on perusing Section 321 Cr.P.C., the Court feels that the Prosecutor requires the consent of the Court to take back the prosecution. It reflects that the consent of the Court should be in consonance with the judicial conscience. It should not reflect the arbitrariness or the whims of a judicial officer and to construct the phrase "public interest" as per his own convictions, housed in the mind on sundry factors including the background and thus it should be avoided. Reasons which have been given by the Senior Public Prosecutor and ratified by another In-charge Public Prosecutor are quite self-explanatory and are enough to show that to prosecute these accused applicants was wholly unjustified and unfair. The court should not have an emulative approach and should shun to disregard a Government Order on whimsical and self-defined conceptions of the "public interest" until and unless that order is apparently against an ordinary prudence and appreciation.

5. Although the report of the technical audit committee/cell constituted by the Government comprising of Junior Engineer and Assistant Engineer of the Public Works Department, a premier body to carry out the development work of the Government disclosed no irregularity, but even assuming that there was some minor discrepancy in mentioning the names of few labourers and the payment to them, then too it was not of so significance when the work was found to be complete at the spot after the physical verification of the same. As such, there was no work deficit. It is not the allegation that the amount so spent was short than the amount released for the purpose.

6. For the reasons recorded above, judgments and orders dated 27.1.2011 passed by the Judicial Magistrate, Didihat in Criminal Cases No. 714/2004, 715/2004, 718/2004, 719/2004, 716/2004, 720/2004 and 717/2004 as well as the and the judgments and orders dated 17.10.2012 passed by the Sessions Judge, Pithoragarh in Criminal Revisions No. 3/2011, 4/2011, 7/2011, 8/2011, 5/2011, 9/2011 and 6/2011, which are impugned in these petitions, are perverse and not legally sustainable. Consequently, these impugned judgments and orders of the trial court as well as of the revisional court are hereby set aside. Chargesheets filed against the applicants petitioners pursuant to the FIRs dated 11.4.2004, PS Ascot, District Pithoragarh are hereby quashed. Inform the court concerned accordingly.