

(2013) 01 UK CK 0020

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 205 of 2011

Harmod Singh and Others

APPELLANT

Vs

Ram Sankar

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 182, 342
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 7
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4)

Citation : (2013) 1 UC 80 : (2013) 1 UC 332

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Lalit Sharma, for the Appellant; V.D. Bisen, for the Respondent

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J.—Having heard on the delay condonation application (CRMA 8/2013) and restoration application (MCRC 1023/2012), the same are allowed. Delay in filing the restoration application is condoned. Order dated 8.8.2012, passed by this Court, is recalled. Petition is restored to its original number. Heard learned Counsel for the parties on the merits of the case. Also perused the papers on record.

2. Having considered the pros and cons of the case, it appears that Mr. Ram Sankar Singh, belongs to Scheduled Caste community and is resident of village Lauka, and the accused persons, are upper caste persons and residents of village Pandri. Both these villages are adjacent to each other and fall under the territorial jurisdiction of same Police Station Sitarganj, District Udham Singh Nagar. The genesis of the entire controversy between the parties is some piece of agricultural land bearing Khasra No. 44/1 and 44/2 ad measuring 0.235 hectare situated in village Pandri. This land was allegedly in occupation of the accused persons including the present applicants for the last five decades and it was

allotted by the local administration, at the instance of State Government, in favour of as many as 24 persons belonging to Scheduled Caste. Out of these 24 persons, one is Mahgi Prasad, father of the complainant.

3. Attempts to take over the possession over the said land by the allottees were resisted by the persons who were already in occupation of the said land. That apart, 7 persons, who claimed themselves to be under the possession of the land, instituted the proceedings u/s 198(4) of the UP Zamindari Abolition and Land Reforms Act before the Court of District Magistrate, Udham Singh Nagar for cancellation of the allotment. While, this case was pending, all the applicants petitioners and three others filed a Writ Petition No. 1046 (MS) of 2006 before this Court for quashing of the lease deed granted on 12.5.2000 and also sought writ of mandamus commanding the concerned authorities to restrain the allottees of the said land from interfering with the peaceful possession of the petitioners. Writ of mandamus was also sought for expeditious disposal of the said proceedings under 198 (4) UPZA & LR Act.

4. During the course of hearing, the aforesaid first two prayers were not pressed by the petitioners, so this Court vide order dated 4.8.2006 issued a writ of mandamus to the Collector concerned for expeditious disposal, within four months, of the said case. Fate of the said case is not known to learned Counsel for the parties, which is also not of any importance for disposal of the case in hand.

5. Meanwhile, an application u/s 156(3) CrPC was filed on 29.5.2009 by the respondent Ram Sankar Singh against all the applicants including three others levelling several allegations against them including the offences u/s 147, 148, 149, 392, 506 & 342 IPC read with Section 3/7 of the SC/ST Act. On the said application, an FIR was registered. The matter was investigated by the Circle Officer, who after conclusion of the investigation submitted a detailed final report and reported that no such alleged incident ever happened, and complainant Ram Sankar Singh launched a frivolous prosecution in order to exert pressure upon the accused persons to vacate their possession over the land allotted to his father Mahgi Prasad & other persons. This final report is annexed as Annexure No. 6 to the petition. Investigation Officer also recommended initiation of the proceedings u/s 182 IPC against the informant for wrongly launching law and order machinery in motion out of personal vendetta.

6. It is also mentioned in the final report that the persons, named witnesses in the report, did not support the averments made in the FIR. Even the people who were residing in the close vicinity of the alleged place of occurrence did not support the averments made in the FIR. Investigation Officer has found that construction of a wall was underway on the plot located in Khasra No. 44/1 under possession of Harmod Singh & another, which was broken by the complainant. So, a little quarrel took place, which was blown out of proportion to the size of mountains.

7. Complainant moved the application u/s 156(3) CrPC after 40 days of alleged incident and the FIR could be lodged after more than two months of the said incident.

8. After submission of the final report, complainant filed protest petition. Learned Magistrate after recording the statement of the complainant u/s 200 CrPC on 7.3.2010 and statements of his witnesses, namely, Smt. Jeet Kaur and Shyam Sundar respectively on 6.4.2010 and 24.4.2010, u/s 202 CrPC, passed the impugned order of cognizance dated 12.5.2010 and summoned the accused persons to stand trial for the offences u/s 147, 148, 149, 392, 504, 506, 342 IPC read with Section 3/7 of the SC/ST Act.

9. Learned Counsel for the respondent argued that learned Magistrate has rightly passed the impugned order of cognizance after recording the statements of the witnesses. He further argued that the facts involved in this case couldn't be analyzed by this Court u/s 482 CrPC.

10. I do not find any substance in the contentions raised by the learned Counsel for the respondent. In the above-narrated factual backdrop of the controversy and considering the detailed final report submitted by an officer of the rank of Deputy Superintendent of Police, it is amply clear that the complainant lodged the FIR out of sheer vengeance and to settle his personal scores, and the reason for the same was the fact that he wanted to exert pressure upon the accused persons so that they may vacate the aforementioned land and the complainant may take over possession over the same. However, this Court is not making any observation regarding the genuineness and authenticity of the allotment of the said land.

11. In the above facts and circumstances of the case, it is clear that the impugned proceedings are nothing but gross abuse of the process of Court and the same are liable to be quashed. Consequently, this C482 petition is allowed. Impugned order of cognizance dated 12.5.2010 as well as the entire proceedings of Criminal Case No. 654/2010, Ram Shankar v. Satpal & Others, u/s 147, 148, 149, 392, 504, 506, 342 IPC read with Section 3/7 of the SC/ST Act, pending before the Court of Additional Judicial Magistrate, Khatima, District Udham Singh Nagar, are hereby quashed. Inform the court concerned accordingly.