
(2012) 03 UK CK 0122

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 1106 of 2010 Along
with Criminal Miscellaneous Application (C482) No. 318 of 2011

Himanshu Dhondiyal and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210, 482

Penal Code, 1860 (IPC) — Section 323, 452, 504, 506

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

Citation : (2012) 1 NCC 897 : (2013) 1 UC 517

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : B.S. Parihar, for the Appellant; M.A. Khan, Brief Holder and Mr.
Mohd. Azim, Advocate for the Respondent No. 2, for the Respondent

Judgement

Prafulla C. Pant

1. Heard. By means of these two petitions moved u/s 482 Cr.P.C, the petitioners have challenged the proceedings arisen out of same incident dated 01.07.2010, within the limits of Police Station-Ram nagar.

2. Learned counsel for the petitioners submitted that in respect of the incident in question, respondent No. 2 Smt. Gauri filed a Criminal Complaint Case No. 614 of 2010, in which, the petitioners are summoned by Judicial Magistrate, Ramnagar, on 27.09.2010, to face the trial in respect of offence punishable u/s 323 of I.P.C. It is further pointed out that in respect of the same incident, a First Information Report was got registered by the respondent No.2 Smt. Gauri at Police Station-Ramnagar, on 25.09.2010, and charge sheet has been filed before the court of Chief Judicial Magistrate, Nainital, in respect of offences punishable u/s 323, 452, 504, 506 of I.P.C. and one punishable u/s 3 (1) (X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. It is pleaded that in respect of the same offence, the petitioners cannot be tried in two separate trials.

4. Having gone through the papers on record, relating to the Criminal Case No. 1723 of 2010 (arisen out of F.L.R. No. 275 of 2010) relating to offences punishable u/s 323, 452, 504, 506 of I.P.C. and one punishable u/s 3(1) X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, pending before the Chief Judicial Magistrate, Nainital, and further going through the papers relating to Criminal Complaint Case No. 614 of 2010, relating to offence punishable u/s 323 of I.P.C, pending in the court of Judicial Magistrate, Ramnagar, this Court finds force in the submission of learned counsel for the petitioners that two separate trials are pending in respect of the same offence in two different courts, one in the form of the charge sheet filed before the Chief Judicial Magistrate, Nainital, and another in the form of criminal complaint pending before the Judicial Magistrate, Ramnagar.

5. Section 210 of Cr.P.C. provides procedure in respect of the offence, where the criminal complaint case as well as the police investigation are on. The Section provides that in such matters, the Magistrate shall stay the proceedings of the criminal complaint case and wait for the report of the police, after investigation. Since, the First Information Report was got lodged on 25.09.2010, the Judicial Magistrate, Ramnagar has erred in law in proceeding with the complaint, as such the summoning order of the accused vide his order dated 27.09.2010, cannot be upheld. In the above circumstances, the order dated 27.09.2010, passed by Judicial Magistrate, Ramnagar, in criminal complaint case is liable to be set aside. Accordingly, Criminal Misc. Application (482) No. 1106 of 2010, is allowed, and the proceedings of Criminal Complaint Case No. 614 of 2010, relating to offence punishable u/s 323 of I.P.C., pending in the court of Judicial Magistrate, Ramnagar, are hereby quashed. However, the proceedings of Criminal Case No. 1723 of 2010 (arisen out of F.I.R. No. 275 of 2010), relating to offences punishable u/s 323, 452, 504, 506 of I.P.C. and one punishable u/s 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Ramnagar, District Nainital, pending in the court of Chief Judicial Magistrate, Nainital, are not interfered with. Accordingly, the Misc. Application (C-482) No. 318 of 2011 stands dismissed, with the observation that if the petitioners Himanshu Dhondiyal, Manish Dhondiyal and Smt. Geeta Dhondiyal, surrender before the court concerned, their bail application shall be heard and disposed of without unreasonable delay.