
(2007) 09 UK CK 0003

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 326 of 2007

James Das and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 328, 329, 330, 365

Citation : (2007) NCC 678

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Arvind Vashists, for the Appellant; R.K. Shah, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble B.C. Kandpal, J.—By way of this petition u/s 482 of Cr.P.C., the applicants have sought the relief for quashing the charge sheet dated 29.4.2006 and the entire proceedings originated therefrom which is registered as Case No. 2076 of 2006, State vs. Jems Das and others, under Sections 365, 328, 329, 330; 420, 406, 120-B, 506 I.P.C. pending in the court of Chief Judicial Magistrate, Haridwar. Brief facts of the case giving rise to this petition are that respondent No. 2 lodged F.I.R. against the applicants under Sections 420, 464, 468 I.P.C. The Police investigated the case and submitted charge sheet dated 29.4.2006 and Criminal Case No. 2076 of 2006 under Sections 365, 328, 329, 330, 420, 406, 120-B, 506 I.P.C. was registered before the court of Chief Judicial Magistrate, Haridwar, in which summoning order dated 6.5.2006 was passed. Feeling aggrieved by the charge sheet as well as the criminal proceedings as originated from the charge sheet, this petition u/s 482 of Cr.P.C. has been filed for quashing of the same.²³

2. The contention of the petitioners is that relations between the complainant and the accused persons are strained and a series of litigation is pending

between them in various courts and the present criminal case has been instituted as a counter blast and complaint has been filed with malafide intention by the complainant and the proceedings of the case pending in court below are abuse of process of court, and are liable to be quashed in the petition u/s 482 of Cr.P.C.

3. The learned counsel for respondent No. 2 has filed counter affidavit and alleged that the wife of the respondent No. 2 in order to save the property of her husband filed a civil suit against the respondent No. 2. When the respondent No. 2 came out from the illegal detention of the applicants, then he filed an application u/s 156(3) Cr.P.C. against the applicants in the court of C.J.M. Haridwar. The respondent No. 2 was confined by the applicants in their house at Meerut and he was kept on drugs to obtain the signature on blank papers to grab his property. The complaint filed by the respondent No. 2 before the court of Chief Judicial Magistrate, Haridwar was previously dismissed. Thereafter, he filed a criminal revision against the order dated 22.11.05 and the learned Sessions Judge, Haridwar allowed the revision of the respondent No. 2, thereafter a F.I.R. was lodged against the applicants.

4. Learned counsel for the petitioners, in reply to the counter affidavit filed by respondent No. 2, filed rejoinder affidavit reiterating the facts mentioned in the petition.

5. Learned counsel for the respondent No. 2 has also filed supplementary counter affidavit and submitted that the learned Magistrate has issued summons after due application of mind and the summoning order has not been challenged by the applicants.

6. In reply to the supplementary counter affidavit filed by respondent No. 2, learned counsel for the petitioners filed supplementary rejoinder affidavit and submitted that the Investigating Officer has not collected any material evidence on record against the applicants to establish the allegations made against them and no offence whatsoever is made out against the applicants on the basis of the evidence collected by Investigating Officer. The complaint is made with malafide intention against the applicants.

7. I have heard learned counsel for the parties and perused the record.

8. The Hon''ble Apex Court further in a case R.S. Raghunath Vs. State of Karnataka and another, has observed that "High Court is not justified in going into the disputed question of fact by appreciating the documents and evidence produced before it by treating them as evidence to hold the accused person as innocent because it will amount to pre-trial of a criminal case under inherent powers of the Court." The Hon''ble Apex Court in the same judgment has also observed that "High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. The High Court may only examine whether the First Information Report or the complaint or the material collected by prosecution taken on their face value and accepted in entirety, prima facie constitute an offence or make out a case against

the accused person.

9. Learned counsel for the petitioners has further submitted that if the First Information Report has been lodged with malafide intention in order to harass them, then the same would amount to abuse of process of court and the High Court while exercising the powers u/s 482 of Cr.P.C. can interfere in these types of matters. I do not find any substance in the arguments advanced by learned counsel for the petitioners. It is true that in case if the F.I.R. has been lodged with malafide intention and trial court without applying its mind has taken the cognizance on such F.I.R. then certainly there would be an abuse of process of court. The police after investigation, finding prima facie case against the applicants, submitted charge sheet to face trial. The trial court has to adjudge the allegations against the applicants after taking evidence and this court cannot quash the F.I.R. as well as the proceedings by way of petition u/s 482 of Cr.P.C. when it has no evidence to assess.

10. So far as the malafide of complainant is concerned, the Hon"ble Supreme Court in a case State of Maharashtra & others vs. Ishwar Piraji Kalpatri & others, reported in AIR 1996, SC 722 has observed that "mere fact that complainant is guilty of malafide is no ground for quashing the proceedings when the complaint or F.I.R., if accepted as true, makes out an offence."

11. For the aforesaid reasons, I do not find any abuse of process of court as well as flagrant injustice to be caused to the petitioners in this case.

12. The petition lacks merit and is liable to be dismissed. Accordingly, the petition is dismissed. Stay order dated 18.05.2006 stands vacated.