
(2011) 08 UK CK 0165

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 314 of 2009

Jodh Singh and Another

APPELLANT

Vs

Satya Narayan Rastogi

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182, 200, 202, 203, 399(2)
Penal Code, 1860 (IPC) — Section 364

Citation : (2011) 08 UK CK 0165

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J.—By way of this Criminal Miscellaneous Application, the powers of this Court have been sought to be invoked for setting aside the order of cognizance dated 5.12.2008, passed by the Judicial Magistrate, Haridwar in Criminal Complaint Case No. 619/2008, Satya Narayan v. Jodh Singh and Ors., whereby the accused Jodh Singh, Smt. Amarpal Kaur (wife of Jodh Singh), Vikram (son of Jodh Singh), Dhanji Gujrati, Smt. Narmada (wife of Dhanji), Naval Singh and Smt. Veervati (wife of Naval Singh) have been summoned to face the trial for the offence punishable u/s 364 Indian Penal Code. The applicants have also sought to set aside the order of the Additional Sessions Judge dated 13.10.2008, passed in Criminal Revision No. 68/2007, Satya Narayan Rastogi v. State & 7 others, whereby the revision was accepted and the learned Judicial Magistrate was directed to pass the orders afresh in the light of the observations manifested in his order. It has further been prayed to quash the order dated 24.2.2009, passed by the Sessions Judge, whereby the learned Sessions Judge has held that the revision against the order of cognizance dated 5.12.2008 is not maintainable in the light of the ratio pronounced by Hon'ble Apex Court in case of Subramanyam Setu Raman v. Maharashtra State as well as in case of Adalat Prasad v. Roopalal Jindal.

2. Facts, in brief, giving rise to this petition are that on 3.12.2002, one Ram Narayan, S/o Krishna Bihari Rastogi, R/o Haridwar city, left his house at about 12 noon for his shop, but neither he reached to the shop nor returned back to his home in the evening. A massive hunt was made to search his whereabouts but in vain. So the family members apprehended that Ram Narayan might have been abducted by the accused persons and he could have been assassinated thereafter. His missing report was lodged on 6.12.2002 with Kotwali Haridwar. The police also strived to search the whereabouts of the Ram Narayan, but he could not be traced out.

3. Satya Narayan, one of the brothers of the absentee, moved an application to SSP, Haridwar on 23.12.2002 and by the intervention of SSP, Haridwar, First Information Report could be lodged on 9.1.2003 against all the seven accused persons for the offence of Section 364 Indian Penal Code.

4. After investigation, the police found that No. offence is made out against the accused persons and, accordingly, submitted Final Report on 26.10.2003, nay the report u/s 182 Code of Criminal Procedure against the complainant Satya Narayan for lodging the false report and setting the Government machinery in motion on that basis. The police also recommended for the expungement of the case itself from the police record.

5. The complainant Satya Narayan filed a protest petition against the Final Report on 16.3.2005. The Magistrate concerned treated that protest petition as a complaint petition and recorded the statement of Satya Narayan u/s 200 Code of Criminal Procedure on 25.11.2005 as well as the statement of Raj Narayan (brother of complainant) and Smt. Laxmi Rastogi (wife of Raj Narayan) u/s 202 Code of Criminal Procedure.

6. After considering the averments made in the complaint petition and the statements of the witnesses, the Judicial Magistrate, Haridwar did not find any cogent reason to take cognizance of the alleged offence and, accordingly, dismissed the said complaint u/s 203 Code of Criminal Procedure vide order dated 12.1.2007.

7. A revision was preferred against the aforesaid order of dismissal of the complaint, and in the said revision, the impugned order was passed by the Additional Sessions Judge dated 13.10.2008, accepting the same, and it was directed to the Magistrate to pass the orders afresh in the light of the observations made in the revisional order. So, the matter again came up before the Judicial Magistrate, Haridwar, who passed the order of cognizance dated 5.12.2008. The accused applicants challenged this cognizance order in the Revision No. 18/2009, but the same was dismissed by the officiating Sessions Judge, Haridwar on 24.2.2009. Hence, this petition has been filed seeking to quash the orders mentioned above.

8. It is pertinent to mention that out of the seven accused persons, only two accused Jodh Singh and Smt. Amarpal Kaur (wife of Jodh Singh) have filed this

petition.

9. I have heard the learned Counsel for the parties and have gone through the record.

10. Learned Counsel on behalf of the applicants has contended that the revisional court, while passing the impugned order dated 13.10.2008, did not render an opportunity of hearing to any of the prospective accused persons including the applicants, whereas the provisions of Section 399(2) read with Section 401(2) Code of Criminal Procedure mandate that No. order under this Section shall be made to the prejudice of the accused, or other person, unless he has had an opportunity of being heard either personally or by pleader in his own defence.

11. In support of the above argument, learned Counsel for the applicants cited a judgment of the Hon'ble Apex Court delivered in Raghu Raj Singh Rousha v. Shivam Sundaram Promoters Private Limited and Anr. reported in (2009) 1 SCC (Cri) 801, wherein the Hon'ble Apex Court has held that on the principle of audi alteram partem, No. order under revision should be passed by the Sessions Judge without giving an opportunity of hearing to the prospective accused.

12. It has been argued on behalf of the Respondent that in the said revision (No. 68/2007), all the prospective accused were impleaded as opposite parties and it can be presumed that the revisional court might have had sent the notices to all of them asking them to put their objections, if any. If they did not avail that opportunity, then this defence of non-compliance of the provisions of Section 399(2) read with Section 401(2) Code of Criminal Procedure, on the part of the applicants, cannot be raised at this stage.

13. On perusal, this Court finds that nowhere, in the impugned order dated 13.10.2008, it is manifest that an opportunity of hearing was afforded to the applicants/prospective accused persons. Learned Revisional Court should have explicitly mentioned in its order as to whether the service of notice upon the prospective accused persons was effected or not?

14. Be that as it may, this Court heard the either sides at length on the legality of the cognizance order passed against the accused persons by the Judicial Magistrate, Haridwar on 5.12.2008, and thus, the applicants have been given appropriate opportunity to represent themselves before the Court of Law.

15. As regards the judging of merits of the cognizance order dated 5.12.2008, which has been passed subsequent to the directions given by the revisional court vide its order dated 13.10.2008, it appears that the said order has been made merely on the basis of the speculations that Ram Narayan (alleged abductee) was seen by Smt. Laxmi Rastogi, wife of Raj Narayan (elder brother of the abductee) when he was being taken away by the accused persons in a Vikram vehicle (a tempo). This statement was given by Smt. Laxmi Rastogi to the Magistrate u/s 202 Code of Criminal Procedure on 17.1.2006 i.e. after the lapse

of more than three years of the alleged incident. Had Smt. Laxmi Rastogi and other family members been aware of the fact that the accused persons including the applicants were seen along with the abductee Ram Narayan while he was being taken away after his alleged abduction towards Jwalapur in a tempo, then none had prevented them to mention this fact in the report dated 6.12.2002, which, for the first time, was lodged with the police, albeit the same was also lodged after expiry of almost three days of the alleged incident. If it is the case of the complainant that the police did not lodge the FIR in exactly the same words, which he disclosed to them, then also it was too late on the part of the complainant to send an application to the SSP concerned on 23.12.2002 i.e. after the lapse of nearly 20 days of the alleged incident. In that application too, the complainant has only expressed his suspicion upon the accused persons on the basis of enmity. Nothing was mentioned in clear terms that Smt. Laxmi Rastogi, wife of Raj Narayan, the elder brother of the abductee, had personally seen the accused persons along with the abductee on the alleged date of incident. Hence, this afterthought on the part of the complainant indicates that the accused persons have been implicated only on the basis of enmity, and there is No. substantial evidence available against them, and that is why, the police after the investigation, not only submitted the Final Report, but also recommended for expungement of the crime from the record as well as the proceedings of Section 182 Code of Criminal Procedure against the complainant for falsely launching of the criminal prosecution and setting the Government machinery in motion without having any substance.

16. For the reasons recorded above, the instant criminal miscellaneous application u/s 482 Code of Criminal Procedure has force and the same is liable to be allowed.

17. Now, the question arises for consideration as to whether the impugned cognizance order should be quashed only in respect of the applicants or against all the accused persons, who have not come up before this Court. In this regard, this Court is of the considered view that when it has been established and manifest on the face of the record that the impugned cognizance order, as a whole, itself is based on speculations, and is without any substance, then it will not be proper and in the interest of justice to allow it remain operational and effective in respect of those accused persons who have not approached this Court, as it will not only give rise to unnecessary litigation but also lead to waste of valuable time of the Court. Therefore, the impugned cognizance order needs to be quashed in its totality against all the accused persons.

18. Resultantly, the petition is allowed. The order of cognizance dated 5.12.2008 passed by the Judicial Magistrate, Haridwar and the orders of the revisional court dated 13.10.2008 and 24.2.2009, all are hereby quashed.

19. Registry is directed to inform the court concerned accordingly.