
(2009) 04 UK CK 0046
In the Uttarakhand High Court

Kabool Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 200, 202, 203, 204
Penal Code, 1860 (IPC) — Section 114, 120B, 342, 366, 368

Citation : (2009) 04 UK CK 0046

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Judgement

J.C.S. Rawat, J.—None for respondent No. 3 inspite of sufficient service.

2. This petition u/s 482 Cr.P.C. has been filed for setting aside the impugned order dated 11/05/2004 passed by the Additional Sessions Judge/1st Fast Track Court, Haridwar in Criminal Revision No. 70 of 2004, Dharpal v. State and Ors.

3. Brief facts leading to this petition are that a missing report was lodged with the police station on 12/05/2002 alleging therein that Km. Mithlesh D/o Kabool Singh and Ravita D/o Phool Singh aged about 19 and 20 years respectively are missing since 07/06/2002. Later on a report was submitted to the police that both the girls have returned to their homes. It was also alleged that the girls have gone to their relatives and nobody has taken away them from their houses. Later on after three months" on 09/09/2002 an application u/s 156(3) was submitted to the Magistrate in which it was stated that on 07/05/2002 Km. Mithlesh and Km. Ravita went to school to teach the children but they did not return to their houses. The aforesaid girls were recovered on 06/06/2002 by the police. Both the girls have stated to the complainant that they were taken by Chottu @ Suresh and Rakesh with allurements that they would provide them better employment. During the course of their journey, Dharpal and Kripal met them and they also assured the girls to provide better employment. The accused forcibly detained them and threatened them of dire consequences. On 30/08/2002 Suresh @ Chottu was apprehended and handed over to the police

but the police did not proceed with the case so an application u/s 156(3) Cr.P.C. was filed. Statements of both the girls were recorded by the police. After the investigation, final report was submitted. Later on, again further investigation was directed. The matter further investigated and the police submitted the chargesheet. The Magistrate took the cognizance u/s 366, 368, 506, 420, 120-B, 114 and 342 I.P.C.

4. Feeling aggrieved by the said cognizance order, the petitioner has preferred a revision petition before the learned Addl. Sessions Judge and the learned Addl. Sessions JudgeZZ passed the impugned order.

5. Learned Counsel for the petitioner at the outset contended that the revisional court has exceeded its jurisdiction. He further contended that the revisional court should not have entertained the revision petition as it was an interlocutory order. The remedy available to respondent No. 3 was to file a petition u/s 482 Cr.P.C. Mr. B.S. Parihar, the learned Brief Holder refuted the contention. He further contended that the evidence which is available on record reveals that a prima-facie case u/s 366 and 368 I.P.C. is not made out. The learned Brief Holder supported the judgment of the learned Sessions Judge. The Hon''ble Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal and Others, has held in para 15 as under:

15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but 3 then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

6. Thereafter, the Hon''ble Apex Court in the case of Subramaniam Sethuraman v. State of Maharashtra and Anr. reported in 2005 SCC (Cri) 242 has held in para 15 as under:

17. As observed by us in Adalat Prasad case² the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy u/s 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.

18. The learned Counsel for the appellant then sought leave of this Court to approach the High Court by way of Section 482 petition questioning the issuance of process by the Magistrate. The same was very strongly opposed by the learned Counsel for the respondents who contended that the complaint in this case was filed as far back as 24-12-1996 and though there was a direction earlier for an early disposal of the trial, the appellant and the other accused have successfully managed to keep the trial in abeyance by initiating one proceeding

after another even up to this Court. He submitted that both this Court as well as the High Court in the earlier proceedings have left the question of validity of statutory notice to be considered at the trial but the accused persons including the appellant herein are time and again raising the same issue with a view to delay the trial, hence no such permission as sought for by the appellant should be granted.

19. We see that this Court while dismissing earlier SLP as withdrawn had left the question of legality of the notice open to be decided at the trial. Therefore, legitimately the appellant should raise this issue to be decided at the trial. Be that as it may, we cannot prevent an accused person from taking recourse to a remedy which is available in law. In Adalat Prasad case we have held that for an aggrieved person the only course available to challenge the issuance of process u/s 204 of the Code is by way of a petition u/s 482 of the Code. Hence, while we do not grant any permission to the appellant to file a petition u/s 482, we cannot also deny him the statutory right available to him in law. However, taking into consideration the history of this case, we have no doubt that the court concerned entertaining the application will also take into consideration the objections i.e. raised by the respondent in this case as to delay i.e. being caused by the entertainment of applications and petitions filed by the accused.

7. It is thus apparent that the revision petition was not maintainable before the trial court in view of the pronouncement of the Hon''ble Apex Court quoted above. The learned Sessions Judge has passed the order without jurisdiction.

8. In view of the foregoing discussion, I find that the order of the learned Sessions Judge dated 11/05/2004 in Criminal Revision No. 70 of 2004 is liable to be quashed. Accordingly, the impugned order is set aside. The trial of the case shall proceed in accordance with law.