

(2023) 05 UK CK 0089

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 157 Of 2012 (Under Section 482 Of The Cr.P.C)?????????

Kashi Singh Raipa (Budiya)

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(1), 155(2), 482
Indian Forest Act, 1927 — Section 26
Wild Life (Protection) Act, 1972 — Section 17A
Constitution Of India, 1950 — Article 226

Citation : (2023) 05 UK CK 0089

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : R.S. Sammal, G.S. Sandhu, K.S. Rawal, Pankaj Joshi?

Final Decision : Dismissed

Judgement

Pankaj Purohit, J

1. By means of this application filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the applicant has prayed for quashing of the charge-sheet as well the summoning order dated 18.11.2011, passed by learned Judicial Magistrate, Didihat, District Pithoragarh and the charge framed by him vide order dated 19.01.2012 in Criminal Case No.316 of 2011, State vs. Kashi Singh Raipa, under Section 26 of the Indian Forest Act, 1927.

2. The brief facts of the case which emerge from perusal of the record are that, on the basis of a recovery memo, on 17.07.2011, 2.100 Kgs. of Yarsa Gambu (Cordyceps Sinensis) was recovered from the applicant-Kashi Singh Raipa. A criminal case was registered against him under Section 26 of the Indian Forest Act, 1927, by lodging a First Information Report on 18.07.2011 at 00:35 a.m. The First Information Report was lodged by the informant-SSI Harish Chandra

Joshi, Kotwali Jauljibi, District Pithoragarh against the sole applicant-Kashi Singh Raipa, S/o Late Sri Jeet Singh Raipa.

3. The case of the prosecution, as unfolded, is that on 17.07.2011 the informant-SSI Harish Chandra Joshi along with Constable-193 Jeevan Mehra, Constable-Pramod Joshi on the tip of an informer that in the night of 17.07.2011, Yarsa Gambu (*Cordyceps Sinensis*) would be supplied by a small car, the police party was checking the vehicles at 10:15 p.m.; at that time Shri Bhopal Singh Kirola, Ranger Forest Area Escort came on the spot from Forest Barrier Check Post, Gauripul for going Jauljibi. When the police party was checking the vehicle, Constable-193 Jeevan Mehra flashed his torch (dragon light) towards Munsyari Road, one person was seen coming in front of the shop of Laxman Singh holding a black colour bag in his hand. On suspicion, the police party came on the Munsyari Road and caught the man from a distance of about 70 paces from the barrier near Tiraha. The man, on asking by the police party, told his name as Kashi Singh Raipa, S/o Late Sri Jeet Singh Raipa, R/o Tehsil Road Dharchula, P.S. Dharchula, District Pithoragarh. On opening the black bag, Yarsa Gambu (*Cordyceps Sinensis*) was recovered from a white colour bag kept inside the black bag. When the police party asked the man to show the papers for carrying and keeping the recovered Yarsa Gambu (*Cordyceps Sinensis*), he failed to show any papers. The accused-applicant was arrested at 10:50 p.m. for the charge of Section 26 of the Forest Act for carrying the prohibited forest products. The recovered Yarsa Gambu (*Cordyceps Sinensis*) was taken into possession by the police and the same was weighed on the spot on scales brought from police station by Constable Jeevan Mehra. The weight of the Yarsa Gambu (*Cordyceps Sinensis*) with bag was 2.100 Kgs. The Yarsa Gambu (*Cordyceps Sinensis*) was sealed and the memo of recovery was made on the spot. The copy of the recovery memo was given to the applicant-accused by the police party, which resulted into lodging of a Case Crime No.09 of 2011, under Section 26 of the Indian Forest Act, State vs. Kashi Singh Raipa as stated above.

4. After investigation, the charge-sheet was submitted against the accused-applicant on 25.09.2011, on which, the cognizance was taken by the learned Judicial Magistrate on 18.11.2011 and the accused-applicant was summoned to face the trial. On 19.01.2012, the charge was framed against the accused-applicant by the learned Judicial Magistrate, Didihat, District Pithoragarh. The charge was read over to the accused-applicant who pleaded not guilty and requested for the trial. It is this summoning order dated 18.11.2011, charge frame dated 19.01.2012 and the charge-sheet submitted by the police which has been requested to be quashed by him in this C482 application as mentioned hereinabove.

5. The main ground which has been taken by the applicant for quashing the impugned orders as referred hereinabove is that, according to the applicant, he is a member of Scheduled Tribe and a permanent resident of Village Dharchula and according to the Forest Act, they are permitted to collect the Yarsa Gambu

(Cordyceps Sinensis) for medicinal use. The applicant further relied upon D.O. Letter No.4345/8-4, dated 19.05.2011, annexure-8 to the C482 application issued under the hand of Deputy Conservator of Forest Pithoragarh, Forest Division, Pithoragarh to Sub-Divisional Forest Officer, Didihat and Berinag as well as the Office Order No.98-PA/Dehradun dated 14.09.2010, annexure-11 to the application. On the strength of these two letters, annexure-8 and 11 to the C482 application, it is submitted on behalf of the applicant that vide these two documents, the Government has issued direction for extraction and marketing of the Yarsa Gambu (Cordyceps Sinensis) from the Forest Range Munsyari and Dharchula. Para 19 of the annexure-8 pressed into service to contend that no seizure would be effected from the collectors of the Yarsa Gambu (Cordyceps Sinensis), who have been permitted to collect it. Clause 19 of annexure-8 is quoted as below:-

6. Annexure-11 was also pressed to contend that the collection of Yarsa Gambu (Cordyceps Sinensis) shall be made only by Van Panchayat and no outer interference from contractors or businessmen through labourers from outside shall be permitted to collect the Yarsa Gambu (Cordyceps Sinensis). The Government of Uttarakhand has permitted the collection and granting of the Yarsa Gambu (Cordyceps Sinensis), subject to the conditions mentioned in annexure-11 to the C482 application, which is quoted as below:-

7. Relying upon these two documents, annexure-8 & 11, it has been submitted by the applicant that he deposited a royalty of Rs.16,000/- vide cheque of State Bank Dharchula dated 08.07.2011 in favour of Forest Panchayat Khela, Dharchula, District Pithoragarh, the copy of which was annexed as annexure-9, and after depositing the money, a transit pass was issued to the applicant.

8. The applicant's contention is that there is no illegality if 2.100 Kgs. Yarsa Gambu (Cordyceps Sinensis) was found in his possession by the police and for which no criminal prosecution legally could be lodged against him. However, the applicant categorically stated that he was in possession of 4 Kgs. of the Yarsa Gambu (Cordyceps Sinensis), but the police officials have shown only 2.100 Kgs. Yarsa Gambu (Cordyceps Sinensis) in the possession of the applicant, as the rest of the Yarsa Gambu (Cordyceps Sinensis) was misappropriated by the police officials of Police Station Jaulijibi.

9. The counter affidavit has been filed under the hand of Kushal Ram, Sub-Inspector, Police Station Balwakot, District Pithoragarh, in which denying the case of the applicant, it has been categorically stated that the accused-applicant could not produce any relevant paper; the recovery was as per law and the investigation has been conducted in a very fair manner and accordingly, the charge-sheet was submitted against the applicant under Section 26 of the Indian Forest Act.

10. It has been categorically stated that only 2.100 Kgs. Yarsa Gambu (Cordyceps Sinensis) was recovered from the accused and accordingly, the

recovery memo has been prepared. The statements of complainant-Harish Chandra Joshi, witness-Bhupal Singh and Constable-193 CP Jeevan Singh were also annexed to buttress State's stand.

11. Heard learned counsel for the parties and meticulously examined the record of the case. Nowhere from the record, it has been proved that the Yarsa Gambu (*Cordyceps Sinensis*) was purchased by the applicant in an open auction made by the Van Panchayat, as mandated in annexure-8 and 11. The applicant though annexed a receipt of Rs.16,000/-, as annexure-9, to the C482 application to submit that the money was deposited towards the purchase of Yarsa Gambu (*Cordyceps Sinensis*) in auction from Van Panchayat Khela and accordingly, the ravana was issued by the Van Panchayat Khela (annexure-10 to the C482 application).

12. The veracity of these documents cannot be decided by this Court in proceedings under Section 482 of the Cr.P.C. It is only after evidence is adduced by the prosecution or the defence, these documents could have been proved. On the other hand, detrimental to the interest of the applicant, is the report submitted by the Police, Superintendent, Pithoragarh on orders passed by this Court on 03.09.2020. The report is on record, which nowhere proves the contention of the applicant that any auction has ever been made in Van Panchayat Khela by the then Sarpanch Van Panchayat Shri Jag Mohan Singh Dhami, and in that alleged auction, the applicant purchased the Yarsa Gambu (*Cordyceps Sinensis*) in dispute. It has also come in the report submitted by the Superintendent of Police that the then Sarpanch of Van Panchayat Khela was missing since 2017 and no record of the Van Panchayat Khela is available by which it can be concluded that the applicant-Kashi Singh Raipa purchased 4 Kgs. of the Yarsa Gambu (*Cordyceps Sinensis*) in an auction and was issued a ravana from Van Panchayat Khela.

13. It is also an argument advanced on behalf of the applicant that being a member of Scheduled Tribe, the prohibition of picking, uprooting etc. of specified plants would not be applicable to him. The Court's attention was drawn to Section 17A of the Wild Life (Protection) Act, 1972.

14. From a perusal of its proviso, it is culled out that the proviso will help to the applicant only in case of possession of the specified plant, whether alive or dead, or part or derivative thereof, only when it is for his bona fide personal use. Section 17-A of the Wild Life (Protection) Act, 1972 is extracted as below:-

"17-A. Prohibition of Picking, uprooting, etc., of specified plants.- Save as otherwise provided in this Chapter, no person shall-

(a) Wilfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified, by notification, by the Central Government;

(b) Possess, sell, offer for sale, or transfer by way of gift or otherwise, or

transport any specified plant, whether alive or dead, or part or derivative thereof:

Provided that nothing in this section shall prevent a member of a Scheduled Tribe, subject to the provisions of Chapter IV, from picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his bona fide personal use."

15. Firstly, it is nobody's case that the Yarsa Gambu (*Cordyceps Sinensis*) recovered from the possession of the applicant was for his bona fide personal use. Secondly, the Yarsa Gambu (*Cordyceps Sinensis*), which was recovered from the applicant, is in much quantity weighing 2.100 Kgs. and as a matter of fact, the applicant himself submitted before the Court that the actual Yarsa Gambu (*Cordyceps Sinensis*) which was recovered from him was 4 Kgs. He has nowhere taken the plea that the same was in his possession for his bona fide personal use. Thus, the proviso to Section 17-A of the Wild Life (Protection) Act, 1972 is of no help to the applicant. The argument is, for the reasons, stated hereinabove rejected.

16. In the case of *State of Haryana and others vs. Bhajan Lal and others*, 1992 Supp. (1) SCC 335, the Hon'ble Supreme Court illustratively gave a list of circumstances under which the jurisdiction may be exercised. In para 102, the Hon'ble Supreme Court observed as hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. The case of the applicant falls in none of the parameters set out above. In this view of the matter, the applicant miserably failed to make out a case for interference with the summoning order dated 18.11.2011, charge framed against the applicant dated 19.01.2012 in Criminal Case No.316 of 2011, State vs. Kashi Singh Raipa, pending in the court of Judicial Magistrate, Didihat, District Pithoragarh and there is no occasion to quash the charge-sheet as well.

18. From the material available on record, the prosecution was very well launched against the applicant and the same would not fall within the ambit of Section 482 of the Cr.P.C., which requires any interference. The criminal miscellaneous application filed under Section 482 of Cr.P.C. thus fails and is hereby dismissed.

19. The interim order dated 14.02.2012 stands vacated.

20. Since the criminal trial is held up since 2012, the learned Judicial Magistrate, Didihat, District Pithoragarh is directed to expedite the hearing of the Criminal Case No.316 of 2011, State vs. Kashi Singh Raipa, under Section 26 of the Indian Forest Act.