

(2012) 07 UK CK 0027

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 622 of 2012, Restoration Application No. 428 of 2012 and in Criminal Miscellaneous Application No. 377 of 2004

Km. Parpati Mankani and Another

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406, 417, 420, 506

Citation : (2012) 2 NCC 828

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Advocate : Sudhir Kumar, for the Appellant; Suhail Siddiqui, AGA and Mr. Ajay Singh Bisht, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Servesesh Kumar Gupta, J.—At the outset, it is relevant to mention here that the petition titled above was dismissed by this Court on 23.12.2009 and after a considerable delay of as many as 863 days, a restoration application along with delay condonation application has been filed by the petitioners. Learned counsel for the petitioners is ready to argue the matter instantly, so in the interest of justice, delay condonation application as well as restoration application is allowed. Petition is restored to its original number. This Court has rendered hearing to learned counsel for both the parties. By means of this petition, a prayer has been advanced to quash the proceedings of criminal case no. 31 of 2004 titled as State Vs. Km. Parpati Mankani and another, wherein accused petitioners have been asked to stand trial for the offence u/s 417, 420, 506, 406 IPC.

2. The facts, in brief, are that Parpati Mankani was owner of some land in District Nainital at village Labeshaal, Ghorakhal, Bhowali. She along her brother Ram Govarmal Mankani (applicant no. 2) entered into an oral agreement with

Nagendra Agarwal (respondent no. 2) way back in August 1998 for construction of a four-storey building on the said land. Nagendra Agarwal was indulged in construction work and he agreed to raise the said construction, over the land of petitioners. He developed the site of admeasuring 2400 sq. ft. and raised construction over the land of admeasuring 8789 sq. ft. The applicants made payment of Rs. 50,47,400/- including expenses for construction material and labour work. As per the allegation, Rs. 10,89,150/- was not paid by the petitioners to respondent no. 2, which he invested in purchasing sundry construction material and also spent for payment of several labourers. Account of all affairs was tendered by respondent no. 2 to the petitioners on 18.11.1999, who also occupied the constructed building, Repeated demands were raised by respondent no. 2 to make payment but in vain. Rather, petitioners extended various threats to Nagendra Agarwal, inter alia to kill him, if demand is raised thenceforth.

3. Mr. Agarwal when felt that amount has been grabbed by the petitioners, he lodged an FIR on 23.12.2000 (Annexure no. 4 to the petition) pertaining to crime no. 8 of 2000. Since the matter was of Hill area, the investigation was done by Patwari/Lekhpal (in the Hill areas revenue officials of lower strata are entrusted with police powers) who submitted the final report on 11.04.2001.

4. When a notice was sent to Mr. Agarwal, he came to know that the matter has been culminated on submission of final report by Lekhpal concerned, so he filed a protest complaint on 19.09.2003 in the court of Chief Judicial Magistrate, Nainital.

5. The Magistrate recorded the statement of Mr. Agarwal and his two witnesses namely Rajendra Khatri and Bhuvan Chandra on different dates. Having gone through the contents of protest petition as well as evidence produced by the complainant, the Magistrate took cognizance of the matter as aforementioned.

6. Learned counsel for the petitioners has vehemently argued that if the matter is taken into consideration, then it is basically a civil dispute, which could have been adjudicated in the civil court and by no way the facts/allegations, as mentioned in the First Information Report and the complaint, can be envisaged u/s 417, 406 IPC. In support of his argument, learned counsel for the petitioners has placed reliance upon following precedents: i. Punjab National Bank and others Vs. Surendra Prasad Sinha reported in AIR 1992 Supreme Court 1815; ii. State of U.P. Vs. R.K. Srivastava and Another, ; iii. Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, ; and iv. Prashant Chandra Vs. State of U.P. reported in 2004 (1) J. Cr. C. 666.

7. All these precedents are altogether in different context and this Court is not inclined to intermingle the facts of the above precedents with present one. As regards to the offence u/s 406 IPC is concerned, there was an implied trust between Nagendra Agarwal and petitioners that the former would purchase the construction material, arrange the labours (make payments to various labourers) and raise construction of a four-storey building. Undoubtedly, payment was made

by petitioners various times but that was a part payment. When the building was raised in full, petitioners occupied the same and started to run a hotel, as alleged in the complaint. They did not make full and final payment to the respondent no. 2, so clearly it is a "breach of trust" in violation of the direction of law, as adumbrated in Section 405 of the Indian Penal Code. Petitioners dishonestly misappropriated the construction material, which was used by respondent no. 2 in constructing the building of petitioners.

8. Even if for a moment, the matter is accepted to be of civil nature then also now, it is a settled law that pendency of civil litigation cannot stunt the way of criminal prosecution. It has been alleged that petitioner no. 2 Ram Govarmal Mankani holds a very exalted post in the office of Delhi Government, so under the influence of his high office, he extended threat to respondent no. 2 to waive his claim and sit down silently. This fact has been averred by the complainant in his complaint as well as in the statement of his two witnesses.

9. Having a panoptic view of the matter, this Court is not propensus to intervene in the matter. All the facts are to be scrupulously analyzed and decided by the trial court. There is no abuse of process of law. The petition is devoid of merits and as such, is dismissed. Registry is directed to inform the court below.