
(2010) 04 UK CK 0011
In the Uttarakhand High Court

Kundan Singh and Others	Vs	APPELLANT
State of Uttaranchal (Now Uttarakhand) and Another		RESPONDENT

Date of Decision : 17-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120, 120B, 420, 467, 468

Citation : (2010) 04 UK CK 0011

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—By means of this petition, moved u/s 482 Cr.P.C., the petitioners have sought quashing of the proceedings of Criminal Case No. 3010 of 2001 State v. Mahesh Pokhariyal and Ors. under Sections 420, 467, 468, 471, 474 and 120B of I.P.C., pending in the court of Chief Judicial Magistrate, Dehradun.

2. Brief facts of the case are that on 22.07.2001, a First Information Report was lodged by respondent No. 2 - Amit Pokhariyal against the petitioners/applicants and co-accused - Smt. Vimla Devi. On the basis of the information, a case crime No. 58/455 of 2001 under Sections 420 and 120 of I.P.C. was registered at police Chowki Basant Vihar, District Dehradun. After completing the investigation of the case, chargesheet was submitted against the petitioners on 24.08.2001 under Sections 420, 467, 468, 471, 474 and 120B of I.P.C. Thereafter, a criminal Case No. 3010 of 2001 was registered against the applicants. Feeling aggrieved by the aforesaid proceedings pending in the court of Chief Judicial Magistrate, Dehradun, the petitioners have preferred this petition before this Court for quashing the aforesaid criminal proceedings initiated against them.

3. Heard Sri Lokendra Dobhal, learned Counsel for the petitioners, Sri S.S. Adhikari, learned Counsel for the State/respondent and perused the record.

4. Learned Counsel for the petitioners argued that the petitioners have committed no cheating, as Smt. Indu Bhatnagar vide general power of attorney executed in favour of the applicant - Kundan Singh. Learned Counsel for the petitioners drew attention of this Court to annexure No. 5 to the petition, which is a copy of general power of attorney and pointed out that Smt. Indu Bhatnagar W/o Late Sri Manoj Kumar Bhatnagar had executed a general power of attorney in favour of applicant No. 1 Kundan Singh, which relates to the disputed land in question on 23.09.1999. He has further submitted that the case is purely of civil nature and the case u/s 420 of I.P.C. is not made out against the petitioners. He has placed reliance in a decision of Hon'ble Apex Court in *Devendra and Ors. v. State of U.P. and Anr.* reported in (2009) 3 SCC (Cri) 461.

5. On careful scrutiny of the judgment cited before me by the learned Counsel for the petitioners, I am of the view that the cited decision does not apply to the facts and circumstances of the present case and the same does not extend any help for the applicants. Having considered the submission of learned Counsel for the parties, and after going through the papers on record, this Court is not inclined to interfere with the trial of the case. The revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. It is well settled law that while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provision of Section 482 Cr.P.C. had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. I am of the view that there is no flagrant injustice and abuse of process of court in this case. The evidences are incomplete and hazy as yet. The points raised by the learned Counsel for the applicants are the disputed question of facts and it can be judged by the trial court where the evidence are yet to be collected. This Court while exercising the jurisdiction u/s 482 Cr.P.C. is not supposed to act as a trial judge. The averments made in the petition are the disputed question of fact, which can be assessed and judged by the trial court. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage. Any judgment rendered by me would amount to premature judgment where the evidence is still incomplete and hazy. The applicants shall have an opportunity to place the evidence in their defence before the trial court where the matter shall be finally adjudicated after considering the entire evidence. I do not find any merit in this case at this stage.

6. Accordingly, the petition filed u/s 482 Cr.P.C. is dismissed.

7. Consequently, the stay order dated 24.12.2004 stands vacated.