
(2012) 04 UK CK 0039

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 922 of 2007

Mohd. Ahmad Kabadi and others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2012) 04 UK CK 0039

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Advocate : G.C. Lakchaura, for the petitioners, for the Appellant; P.S. Bohara, Brief Holder for the State/respondent no.1 None, for the Respondent

Final Decision : Allowed

Judgement

Servesesh Kumar Gupta, J.—The challenge through this petition is to the order of cognizance dated 22.10.2007 passed in criminal complaint case no.135 of 2007 (new No. 401 of 2007), titled as "Name Ali Vs. Mohd. Ahmad & two others", whereby learned Judicial Magistrate, Kashipur has summoned the petitioners to stand trial for the offences punishable u/s 323, 504 and 506 IPC. It is pertinent to mention here that complainant Name Ali did file the counter affidavit but later on, his advocate Sri Jagdish Prasad passed away, hence fresh notices were sent to him. The same were served upon his daughter but none has turned up to contest this petition.

2. A rejoinder affidavit has also been filed in response to the said counter affidavit, which is already on the record.

3. This Court has rendered hearing to learned counsel for the petitioners as well as to learned brief holder for the State. After hearing the matter, it transpires that complainant collects old rubbish waste material from door to door and supplies the same to the shop of petitioner Mohd. Ahmad, who is also in the same vocation but he runs his shop at a definite place. Petitioner no.2 Zahid is

real brother of petitioner no.1 whereas petitioner no.3 Sharafat is his brother-in-law. In the course of their business, as afore-stated, it is alleged that about Rs. 80-85 thousand of complainant became due against petitioner no.1. When the money was demanded by complainant on occasion of marriage of his son, petitioner no.1 flatly refused to concede to the request of complainant and challenged him to do whatever he likes. Complainant ran from pillar to post but in vain.

4. It has been alleged that in the intervening night of 18/19.9.2006 at about 2 AM, all the petitioner along with one other person, armed with weapons, entered the complainant's house and threatened his son, named Nafees, after putting the barrel of revolver on his chest. They threatened complainant to take all the legal proceedings back against them otherwise his son would be shot dead. Hearing the hue and cry raised by Nafees, all the family members of complainant, nay the village people, rushed on the spot which made the accused persons escaped.

5. Complainant tried to lodge the FIR but could not be successful, so the accused persons again came in the intervening night of 29/30.9.2006, hurling filthy abuses along with the threat to kill him and ran away from the spot only when the complainant made a noise.

6. The report could not be lodged likewise, as of the earlier incident. So, the complainant filed complaint on 1.5.2007 in the court of the Judicial Magistrate, Kashipur (Distt. U.S. Nagar). His statement u/s 200 was recorded on 25.6.2007 whereas the statements of his witnesses u/s 202 Cr.P.C. were recorded on 29.9.2007. After that learned Magistrate passed the impugned order of cognizance.

7. It has been contended on behalf of petitioners that there is no explanation expressed in the impugned complaint as to why it was lodged in the court after about seven months of the alleged incident of 29/30.9.2006. So, the said complaint is apparently a false one and the same has been lodged in order to impel petitioner Mohd. Ahmed for payment of money which became due in the course of transaction of business between the parties. The Court do fully agree with the contentions submitted by learned counsel for the petitioners and finds that the said complaint is quite mala fide and has been instituted in order to wreak vengeance which arose between the parties on account of differences cropped up between the two in the course of business transaction. The petition, thus, deserves acceptance. It is, accordingly, allowed. Impugned order of cognizance dated 22.10.2007, as also the proceedings of impugned complaint case, as aforementioned, are hereby quashed.