

(2019) 07 UK CK 0166

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 901 Of 2013

Mohd. Matlub

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 164, 482

Indian Penal Code, 1860 — Section 420, 467, 468, 471

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 UK CK 0166

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : B.P. Nautiyal, A.N. Sharma, Subhash Tyagi Bhardwaj

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been filed for quashing the cognizance order/summoning order dated 08.05.2013 and chargesheet dated 15.04.2013, in Criminal Case No.214 of 2013, State Vs. Ahtasham and others, pending before the learned Civil Judge (Sr. Div.) Kashipur, Udham Singh Nagar and the entire proceedings arising out from it.

2. Petitioner is a practicing Advocate in this Court. He filed a Habeas Corpus Petition No.39 of 2012, Mohd. Nafis Vs. State of Uttarakhand and Others (for short 'the Habeas Corpus Petition'). When the Habeas Corpus Petition was taken up on 15.10.2012, the following order was passed by the Court:-

"Learned counsel appearing on behalf of the State submitted that the corpus was called for interrogation in connection with a theft case; he was interrogated and, thereafter, the corpus left the Police Station.

Learned counsel appearing in support of the petition, placing reliance upon two

newspaper reports, has contended that the corpus was picked up from his work place, kept in the lock-up, tortured during the night and, thereafter, whereabouts of the corpus is not known.

Let the petitioner take steps to add the correspondent, on whose reporting, the newspaper report was published, as a respondent.

Two weeks' time is granted to the petitioner for that purpose.

Within two weeks' time, let an affidavit be filed by the State and, in particular, by that Officer of the State, who called the corpus for interrogation, stating in detail, how the corpus was contacted, how the corpus came to the Police Station, who interrogated the corpus and how the corpus left the Police Station. The time of bringing the corpus, the time of interrogation and the time, the corpus left, must also be indicated in the affidavit."

3. On subsequent dates, the corpus could not be produced, but finally it was produced. On 03.12.2012, while disposing of the Habeas Corpus Petition, the court passed the following order:-

"Petitioner is present in Court. He submitted that the corpus was taken into custody by the police and thereafter, the whereabouts of the corpus was not known. Accordingly, he filed a writ petition on being told by Mr. Ahtesham, Advocate that the corpus has been done away by the police. In the writ petition, reliance was placed on a report published by the Reporters in the newspaper 'Hindustan' and, also, in the newspaper 'Amar Ujala'. The people responsible for publication of the said reports were added as parties to the writ petition and, accordingly, notices were sent to them. Mr. C.K. Sharma, Advocate appears on behalf of respondent no. 6 and Ms. Geeta Parihar, Advocate on behalf of respondent no. 7. It is their submission that the newspaper reports were published by the said respondents relying upon some news item said to have been published by some electronic media. As recorded in our order dated 29th November 2012, the corpus, alongwith his father, was present in Court. As directed by the order dated 29th November 2012, the corpus is present in Court even today. He has submitted, as has been reported by the police in the counter affidavit, that the corpus was asked to come to the Police Station for questioning in connection with some theft case and, after such questioning was over, he was permitted to go. Corpus has submitted that soon after he was permitted by the police to go, he did not return to his home. Taking advantage on the situation as above, unscrupulous people made the petitioner to believe that the corpus has been done away in the custody of the police. The newspaper reports, as referred to above, also hint that way. These are irresponsible actions on the part of the media.

2. Accordingly, while, we dismiss the writ petition, we direct the State Government to initiate appropriate proceedings in respect of the matter highlighted above and to ensure that unscrupulous people do not take recourse to what they have taken in this matter."

4. It may be noted here that in the Habeas Corpus Petition, respondent no.4 was Jagdish Pathak, Station House Officer, Jaspur, district Udhham Singh Nagar and respondent no.5 a Police Constable.

5. On 09.02.2013, Station House Officer, Police Station, Jaspur, District Udhham Singh Nagar, J.C. Pathak lodged an FIR against the petitioner and two others. In nutshell, according to this FIR, it is lodged pursuant to the order dated 03.12.2012 passed by this Court in Habeas Corpus Petition. After order dated 03.12.2012 passed in the Habeas Corpus Petition, when inquired from the family members of the person, for production of whose corpus petition was filed, it was revealed that it was the petitioner and one other person, who got signatures of the family members on the blank documents and made it sensational. The FIR was lodged under sections 420, 467, 468 and 471 IPC. After investigation, chargesheet was submitted on 15.04.2013 and cognizance was taken on 08.05.2013 in the case.

6. Learned counsel for the petitioner would submit that if the FIR is lodged in the manner, in which it has been lodged in the instant case, perhaps, no Advocate would assist the Court in free and fair manner. This is a case which, in fact, is a challenge to the profession of the Advocates as well. Learned counsel would submit as hereunder:-

(1) Mohd. Shanawaj filed petition for production of the corpus of Mohd. Nafis. The petitioner was a lawyer, who pleaded the case before the Court.

(2) In its order dated 03.12.2012, this Court did not make any observation against the petitioner. Observation was made with regard to unscrupulous people who made the petitioner to believe that the corpus had been done away in the custody of the Police. In paragraph 9 of the Habeas Corpus Petition, the petitioner had apprehended that Mohd. Nafis might be encountered, as the petitioner was threatened by respondent nos.4 and 5.

7. The FIR has been lodged in the instant case by respondent no.2, who was arrayed as respondent no.4 in the Habeas Corpus Petition despite, direction of the superior Senior Superintendent of Police, Udhham Singh Nagar, who on 07.02.2012 directed him that since he is a witness in the matter he should avoid filing FIR, instead he should get it filed by Circle Officer; there is no basis for submitting chargesheet; in the counter affidavit, in paragraph 6, reference has been made to the statement of Mohd. Nafis and Mohd. Shanawaj recorded under section 164 of the Code, to argue that they have nowhere stated that petitioner ever promised them to get Rs. 5 Lakhs and their statements cannot be a basis to submit chargesheet against the petitioner.

8. It is argued by learned counsel for the petitioner that both Mohd. Nafis and Mohd. Shanawaj leveled allegations against some other person and not against the petitioner. Learned counsel would further argue that no case under any of the sections mentioned in the FIR and under any other penal provision is even prima facie made out. If the criminal proceeding is allowed to continue, it would be

abuse of process of law. Hence, it deserves to be quashed.

9. On the other hand, learned State Counsel would submit that this Court in the Habeas Corpus Petition on 03.12.2012 passed a detailed order and mentioned about unscrupulous people, who made the petitioner of the Habeas Corpus Petition to believe that corpus has been done away in the custody of the Police and Police was directed to initiate appropriate proceeding, therefore, FIR has been lodged and proceedings initiated.

10. Factual matrix is not complicated and it is clear and transparent. What is narrated hereinbefore requires less elaboration but much reflection. Petitioner filed a Habeas Corpus Petition for production of the corpus of the Mohd. Nafis. He was approached by Mohd. Sahanawaj. In view of sensational story having published in the news, the court vide order dated 15.10.2012 directed to make those correspondents party in this petition, on whose reporting, the newspaper report was published. Those correspondents were made party. When finally, the corpus was produced, the Court observed as to what was stated by those reporters. Mohd. Nafis was called by Police. He remained at the Police Station for some time and left. It is not disputed. Filing of petition by the petitioner is not disputed. As stated hereinbefore, there is no mention of the fact in the Habeas Corpus Petition that Mohd. Nafis had been killed in the Police custody; apprehension had, in fact, been raised. Who made that story sensational? What the reporters had published in their articles about Mohd. Nafis? In fact, it was an issue to be looked into by the State Government, pursuant to the order dated 03.12.2012, passed in the Habeas Corpus Petition. The fact remains that in its order dated 03.12.2012 in Habeas Corpus Petition, the Court did not make any observation against the petitioner.

11. In the counter affidavit, references have been made to the statements of Mohd. Nafis and Mohd. Sahanawaj recorded under section 164 of the Code. These statements have been read over before this Court. None of these witnesses have stated that petitioner committed any kind of offence; induce in any manner for filing of the petition. In fact, in the Habeas Corpus Petition, allegations were leveled against the Jagdish Pathak, Station House Officer and a Police Constable. The same person Mr. J.C. Pathak (respondent no.2 herein) files FIR in the instant case. Why? In fact, he is a witness. There were allegations against him. The fact remains that Senior Superintendant of Police reminded it to the respondent no.2 for not to proceed with the FIR, but the reply to this is also very strange as submitted by the State Government in paragraph 23 of the counter affidavit, where it is stated that irrelevant comment cannot vitiate the FIR version. Senior Superintendant of Police, Udham Singh Nagar directed the respondent no.2 not to proceed the matter, but respondent no.2 did not pay any heed to it.

12. This Court is cautious of the fact that in these proceeding under section 482 of the Code, interference should be made very sparingly and with circumspection and that too in exceptional cases. The power of quashing a criminal proceeding should not be exercised in mechanical and routine manner. In the case of State

of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335, Hon'ble Supreme Court has laid down the principles, which are 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 channelized 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."

13. In the Habeas Corpus Petition, on 03.12.2012, the Court did not observe anything qua the petitioner; petitioner pleaded the case before the Court as an

Advocate. In the Habeas Corpus Petition, allegations were also levelled against respondent no.2. The respondent no.2, despite direction of the Senior Superintendant of Police, for not proceeding with the FIR, lodged FIR and proceeded with the matter. There is no evidence against the petitioner, which may make out a prima facie case against the petitioner. Having considered all the materials on record, this Court has no doubt that, in fact, even there is no prima facie case made out against the petitioner. Continuance of the proceedings of the case will definitely be an abuse of the process of law. According the impugned order deserves to be set aside and petition allowed, insofar as the petitioner is concerned.

14. The petition is allowed.

15. The order dated 08.05.2013 passed in Criminal Case No.214 of 2013, State Vs. Ahtasham and others, pending before the learned Civil Judge (Sr. Div.) Kashipur, Udham Singh Nagar is set aside qua the petitioner.