

(2011) 11 UK CK 0144

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 804 of 2007

Mukesh and others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 482
Penal Code, 1860 (IPC) — Section 406

Citation : (2011) 11 UK CK 0144

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesch Kumar Gupta, J.—By way of this Criminal Misc. Application moved u/s 482 Cr.P.C., a prayer has been made to quash the order of cognizance passed by 1st Additional Civil Judge (Junior Division) / Judicial Magistrate, Haridwar on dated 06.01.2006 as well as order dated 17.08.2006. Latter order was passed in pursuance to the direction issued by learned Sessions Judge while adjudicating the criminal revision no. 47 of 2006.

2. It is pertinent to mention that none has put his appearance on behalf of respondent no. 2 while names of her counsel are appearing on the list and this was also the position on previous date, when she was not represented by any counsel. So this Court has given hearing to learned counsel for the applicants and learned Brief Holder for the State.

3. Having heard the matter in issue, it transpires that Meenaxi espoused with Mukesh on 24.06.2005 at Haridwar and within three months of the matrimonial life, she was ousted from her in-laws' house, after beating her along with demand of dowry. She filed a complaint in 2005 itself u/s 406 IPC against Mukesh (husband), Hukum Chand (father-in-law), Usha (mother-in-law), Sonu (brother-in-law), Km. Uma (unmarried sister-in-law), Suman (married sister-in-law) and Dr. Rakesh Sharma (uncle-in-law) with the averments of dowry and

misappropriation of her Stridhan by the persons named above. In the prayer clause, prayer made in the last of complaint, was only that accused persons be directed to return her Stridhan.

4. Learned Magistrate, after recording the statement of complainant as well as her father Ashok Kumar and aunt Meenaxi, wife of Sunil, took cognizance in the matter on 06.01.2006 and summoned Mukesh only. Learned Magistrate was of the view that there is no sufficient reason to take cognizance against rest of the persons. This order of the Magistrate was assailed in the Revision No. 47 of 2006, which was adjudicated by Sessions Judge, Haridwar on dated 05.08.2006 wherein learned Sessions Judge remitted the matter back to the Magistrate with a direction to review the same. Learned Sessions Judge expressed his view that evidence has been similarly adduced against all accused persons so the position of accused Mukesh cannot be in segregation from rest of the accused persons. Learned Sessions Judge also opined that if Magistrate wishes to call further evidence for his satisfaction, then he can do so and pass fresh order of cognizance. In pursuance of the above order, learned Magistrate did not take another additional evidence nor expressed his view in negative, for taking additional evidence but simply stated in his order dated 17.08.2006 that in pursuance of the order passed by Revisional Court, cognizance is also taken against rest of the accused persons namely Hukum Chand, Usha, Sonu, Uma, Suman and Dr. Rakesh Sharma for the offence u/s 406 IPC.

5. Feeling disgruntled, all the accused persons have filed this petition. It has been argued on behalf of learned counsel for the petitioners that learned Magistrate has not made a single whisper regarding his reconsideration or re-appreciation of the statements rendered either by complainant or her witnesses. He has also not asked the complainant to produce further evidence, if any, in the matter but has simply stated that in compliance of directions of the learned Sessions Judge, above named additional accused persons are summoned for the offence punishable u/s 406 IPC. This order is certainly advert non application of mind of the Magistrate. Although the Magistrate was well within his power to pass fresh order of cognizance against all the additional accused persons but he should have stated the reasons thereof on the basis of appreciation of statements deposed on oath, which were already on record or should have asked the complainant to produce some more evidence to satisfy him. The argument advanced by the learned counsel holds water and is acceptable.

6. Another significant aspect in the matter is regarding the definition of complaint, as envisaged u/s 2(d) of Cr.P.C., which reads as under:

2 (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

7. The complaint presented by Meenaxi before the Magistrate is ill drafted and

misconceived because it does not contain the prayer to take the action against accused persons for violation of any penal section of the Indian Penal Code. She has simply prayed that accused persons be directed to return her Stridhan so this much prayer is not exactly covered, as has been adumbrated in the definition of complaint enacted in the Code.

8. In view of the above, petition has force and deserves to be allowed. The petition is allowed. Impugned order of Magistrate dated 06.01.2006 and 17.08.2006 along with complaint case no. 821 of 2005 pending in the court of Civil Judge (Junior Division) / Judicial Magistrate, Haridwar are hereby quashed.