

(2013) 12 UK CK 0020

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 1089 of 2010

Naushad Hussain

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) CriLJ 740

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Aditya Arya and T.A. Khan, s, for the Appellant; Asif Ali, for the Respondent

Judgement

Umesh Chandra Dhyani, J.—The applicant, by means of present application/petition u/s 482 of Cr.P.C. seeks to quash the summoning order dated 26-6-2010, passed by II Addl. Chief Judicial Magistrate, Dehradun in Criminal Case No. 5179 of 2010, State v. Naushad, under Sections 504, 506 of IPC, relating to police station, Patel Nagar, District Dehradun. Complainant (respondent No. 3 herein) lodged an FIR against the accused (applicant herein) on 27-2-2010, at police station, Patel Nagar for the offences punishable under Sections 504, 506 of IPC. After the investigation, a charge-sheet was submitted against the accused for the self-same offences. Cognizance was taken on the said charge-sheet and accused-applicant was summoned to face the trial. Aggrieved against the same, present application u/s 482 of Cr.P.C. was filed.

2. According to the complainant, Razia, her brothers and relatives convened a Panchayat on 1-10-2009 in the evening to settle the dispute between Razia and her husband Naushad Hussain (applicant herein). Naushad Hussain came and introduced himself as Constable in U.P. police, who was posted at Bareilly. Naushad met Razia in the Panchayat. He promised in the Panchayat that if he failed to convince Razia, he will give "triple talak" to her. In the Panchayat, Naushad failed to convince Razia. A settlement deed was prepared according to the dictates of Naushad Hussain. Accused-applicant failed to put his signatures

on settlement deed. He got infuriated and started using abusive language against Mufti Rais Ahmad (respondent No. 3 herein). Mufti maintained silence (keeping in mind the dignity of his office of Mufti). Naushad thereafter threatened Mufti not to intervene in his matter. Subsequent thereto, he threatened Mufti on telephone also. Mufti tried to help a woman according to the tenets of Islam. Shariat Court also issued notice to Naushad. When Naushad came to know of the same, he again used abusive language against Mufti. Accused-appellant also threatened Mufti not to take side of Razia and her brothers. He also sent a threatening letter to respondent No. 3.

3. Foundation of criminal offence is laid against the applicant. It cannot be said, at this stage, that no offence was made out against him. Learned Magistrate, therefore, committed no mistake in taking cognizance of the charge-sheet and summoning the applicant for the offences complained of against him.

4. When the foundation of criminal offences is laid, there is hardly any scope of interference by this Court in the proceedings of the Court below in exercise of its inherent jurisdiction.

5. Hon''ble Apex Court in Amit Kapoor Vs. Ramesh Chander and Another, had laid down certain principles in respect of exercise of jurisdiction u/s 482 of Cr.P.C. One of the principles is that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation for an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charges. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate Courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice.

6. There is no occasion to quash the criminal proceedings pending against the accused-applicant in exercise of jurisdiction vested u/s 482 of Cr.P.C. at this

stage, as would, be evidenced from the law down by the Hon''ble Supreme Court, in *Rajiv Thapar and Others Vs. Madan Lal Kapoor*, paragraph No. 28 of the said ruling is reproduced hereinbelow for convenience:

28. The High Court, in exercise of its jurisdiction u/s 482 of the Cr.P.C. must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

7. It is settled law that the factual aspects of the controversy need not be gone into by this Court in exercise of its inherent jurisdiction u/s 482 of Cr.P.C. which jurisdiction is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The applicant, in the instant case, is unable to pass those tests. As a consequence thereof, application u/s 482 of Cr.P.C. is dismissed, but with the direction upon the learned II Addl. Chief Judicial Magistrate, Dehradun to decide the bail application of the applicant on the same day, subject to his surrender.