
(2011) 12 UK CK 0149

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 75 of 2007

Om Prakash Mittal and others

APPELLANT

Vs

State of Uttaranchal and another

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 379, 427, 452, 504, 506

Citation : (2011) 12 UK CK 0149

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesesh Kumar Gupta, J.—By way of this petition, moved u/s 482 Cr.P.C., the prayer has been made to quash the order dated 23.1.2007 passed by the Judicial Magistrate, Roorkee in complaint case no. 3412 of 2006, Ramrakshpal Vs. Om Prakash Mittal and others. It has also been prayed to quash the entire proceedings of the said complaint case. It is pertinent to mention that the impugned order of cognizance was passed against all the applicants, namely, Om Prakash Mittal, Babli @ Anju and Manju Mittal (both unmarried daughters of Om Prakash Mittal) as also against Virendra Kumar Mittal S/o Om Prakash Mittal, for the offence of Sections 379, 427, 452, 504 and 506 IPC. However, out of those four accused, only three have come up before this Court.

2. This Court has been apprised that the petitioner-Om Prakash Mittal, being an octogenarian at the time of filing of this petition, now, is no more. So, this petition has been contested only on behalf of Babli @ Anju and Manju Mittal (sisters duo). None has turned up on behalf of private respondent no. 2, so this Court has given hearing to learned counsel on behalf of the petitioners as well as to learned brief holder for the State.

3. It transpires that the complaint was filed on 21.11.2006 by complainant Ramrakshpal Sharma, who himself was an octogenarian and leading a retired

life, having served the Government as a Deputy Chief Engineer, Railway. The complainant and the accused Om Prakash Mittal are the next-door neighbours. Being a retired person, complainant Ramrakshpal used to visit his sons, residing outside Roorkee, in Delhi and Ahmedabad, and on the date of incident, i.e. 4.10.2006, he was not present in his house and the same was being looked after by his old brother in law Sadhu Ram and sister. The accused persons dismantled the boundary wall and encroached the premises of the complainant. They also carried the bricks of the wall after dismantling the same.

4. Next day on 5.10.2006 at about 11 AM, the complainant reached to his house from Delhi and himself found the accused persons indulged in dismantling the wall. When prevented to do so, they all hurled filthy abuses and were bent upon to assault the complainant, his sister and brother in law with batons in their hands. They also intimidated the complainant in sundry ways. The accused persons repeated the same incident on 7.10.2006. So, the endeavour was made to lodge an FIR on 8.10.2006 but the Police did not record the same in collusion of the accused persons. The complainant moved an application to the Sub Divisional Magistrate on 11.10.2006, but that too could not yield any result. He further sent an application on 18.10.2006 to Superintendent of Police, but in vain. So, he filed the impugned complaint on 21.11.2006. The complainant was examined u/s 200 Cr.P.C. while his witnesses Siddhu Ram and Som Dutt Sharma were examined u/s 202 Cr.P.C. on 14.12.2006, and the learned Magistrate, having gone through the contents of the complaint as well as the statements of the complainant and that of the witnesses, took cognizance in the matter on 23.1.2007, thereby directing all the accused persons, as aforementioned, to stand trial for the offences, as indicated above.

5. It has been argued on behalf of the petitioners that the things are rather other way round. In fact, there was some encroachment made by complainant Ramrakshpal Sharma in the precincts of Om Prakash Mittal's house, so in order to get redress, he filed a civil suit no. 246 of 2006 in the court of Civil Judge (Junior Division) on 18.10.2006, wherein he sought a relief of prohibitory and mandatory injunction against the complainant Ramrakshpal Sharma and his brother in law Sri Sadhu Ram. Besides, he also moved an application to the Joint Magistrate on 15.11.2006, agitating and stating the entire illegal encroachment done by Mr. Sharma upon the premises and house of Mr. Om Prakash Mittal. Sri Sharma and his sons threatened Mr. Mittal to take the civil suit back by 18.11.2006, which was fixed for the hearing in that suit, or to face the consequences. This way, the intimidation was extended by Mr. Sharma to Sri Om Prakash Mittal and not vice versa. It has also been argued that Ms. Manju Mittal is a Scientist of a very high rank and on the date of the alleged incident, she was in her office. The certificate to that effect has been issued by Central Building Research Institute, thereby certifying that Ms. Manju Mittal, Scientist "F" was present in her office on 4.10.06, 5.10.06 and 6.10.06 from 8:45 AM to 5:30 P.M., while the alleged incident, either that of 4.10.06 or of 5.10.06, is said to be occurred at 10 AM and 11 AM respectively. Fortiori, Om Prakash Mittal, being a

person of 84 years of age, cannot be supposed to be indulged in assaulting and committing the offence of carrying the bricks.

6. It has also been highlighted before the Court that Virendra Kumar Mittal is an Executive Engineer and was posted in Varanasi at the time of incident; he had not visited Roorkee for last three years and while enjoying such a status, he is not supposed to carry the bricks of Mr. Sharma in the manner, as alleged.

7. This Court is convinced with the arguments advanced by learned counsel on behalf of the petitioners and is of the view that the order of cognizance, against all the three applicants and also against Mr. Virendra Kumar Mittal, is misconceived and liable to be quashed along with the entire proceedings of the said complaint case.

8. In view of what has been stated above, the petition is merited and in consequence, it is allowed. The entire proceedings of the complaint case no. 3412 of 2006, titled as Ramrakshpal Vs. Om Prakash Mittal, as also the impugned summoning order dated 23.1.2007, are hereby quashed.