
(2011) 08 UK CK 0025

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 573 of 2011 (U/S 482, Cr.P.C.)

Pramod Kumar and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 2(d), 482
Penal Code, 1860 (IPC) — Section 307, 323, 34

Citation : (2011) 2 NCC 824

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Rajendra Singh, for the Appellant; Mamta Bisht, A.G.A. For the Respondent No. 1, Mr. Mohd. Safdar, Advocate, holding brief of Mr. Parikshit Saini, Advocate For the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant

1. Heard. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the petitioners have sought quashing of the proceedings of Sessions Trial No. 191 of 2010, State Vs. Pramod Kumar and Others, relating to offence punishable u/s 323 I.P.C., pending in the Court of 1st Additional Civil Judge/Judicial Magistrate, Roorkee, District Haridwar.

2. Brief facts of the case are that there had been some incident on 19.01.2008 in Village-Churiala within the limits of Police Station Bhagwanpur in respect of which two cross first information reports were lodged. After investigation, both the cases resulted in charge sheets. On the F.I.R. of the petitioner Pramod Kumar, accused Pintu and Annu were made to face charge in respect of offence punishable u/s 307/ 34 I.P.C. (arising out of crime no. 16 of 2008). On the F.I.R. filed by the present respondent no. 2 Ajay Kumar no offence relating to Section 307 I.P.C. was found to be made out by the investigating officer, but he concluded that the offence punishable u/s 323 I.P.C. is made out against

petitioners Pramod Kumar Narender and Kushal Pal. Accordingly, charge sheet was filed against them in respect of said offence (Section 323 I.P.C.). Both the cases were committed to the Court of Sessions for trial. The one in which petitioners are accused, was registered as Sessions Trial No. 191 of 2010, and the one which related to accused Pintu and Annu, on the F.I.R. of petitioner no. 1 Pramod Kumar was registered as Sessions Trial No. 308 of 2009.

3. As the practice is, and also approved by the various High Courts and Apex Court, such cross cases are tried together as far as possible by one court. Normally, after conclusion of prosecution evidence in one case, the prosecution evidence of other case is recorded and finally arguments are heard together so that both the cases may be decided by separate judgments, and contrary findings as to who is the aggressor, is avoided.

4. It appears that learned Additional Sessions Judges, Roorkee decided Sessions Trial No. 308 of 2009 vide judgment and order dated 24.11.2010, passed in Sessions Trial No. 308 of 2009 and acquitted Pintu and Annu of the offence punishable u/s 307/34 I.P.C. giving them benefit of reasonable doubt but said court did not decide Sessions Trial No. 191 of 2010 with the aforesaid case (S.T. No. 308 of 2009) which is still pending with the same court.

5. The trial court should have decided both the cases by separate judgments together but merely for the reason that the subsequently committed Sessions Trial could not be disposed of with the earlier committed Sessions Trial, the proceedings of the subsequent trial cannot be quashed. It is pertinent to mention here that Code of Criminal Procedure, 1973 is silent as to the procedure by which cross trials are required to be tried. Keeping in mind the provisions contained in Code of Criminal Procedure, 1973 the impugned Sessions Trial No. 191 of 2010 can still be decided by the trial court (Additional Sessions Judge, Roorkee) on its merits.

6. Learned counsel for the petitioners drew attention of this Court to definition of "complaint" contained in Section 2(d) of Cr.P.C. and pleaded that if after investigation of a cognizable offence, charge sheet is filed of a non cognizable offence, such charge sheet is required to be treated as a complaint case. I have gone through the provisions contained in clause (d) of Section 2 of Cr.P.C. and find that it does not help the present petitioners. Trial of Section 323 I.P.C. is a summons trial, and if it is tried as a warrant trial or sessions trial, the rights of accused are not prejudiced. However, in a case vice versa a warrant trial or sessions trial is trial as a summons case, the rights of the accused get prejudiced. As such, even on that ground, the impugned criminal proceedings cannot be quashed. Therefore, for the reasons as discussed above, the petition u/s 482 Cr.P.C. is dismissed with the observation that the trial court may proceed with the trial of the case (S.T. No. 191/2010) as expeditiously as possible.