
(2011) 09 UK CK 0062

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 11 of 2006

Rafiq and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 323, 354, 452, 504, 506

Citation : (2011) 09 UK CK 0062

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—By way of this Criminal Misc. Application, order of cognizance dated 24.11.2005 passed in Criminal Complaint Case No. 800 of 2005 is under challenge. It is pertinent to mention that opposite party Ale Nabi has been personally served but none turns up on his behalf. Even, he has not engaged his counsel to address this Court.

2. This Court heard learned Counsel for the applicants and learned Brief Holder for the State.

3. Having heard the controversy, it appears that all the applicants and opposite party No. 2 Ale Nabi are neighbours. Ale Nabi filed a criminal complaint case No. 800 of 2005 against applicants narrating that on 25.10.2005 at about 10.00 a.m. all the applicants entered in his house in his absence and outraging the modesty of his wife Tarkeet Jahan and beat her. Hearing the noise, neighbours Zameel and Gulam came at the spot, witnessed the incident. It has been stated by Ale Nabi that he took his wife for medical examination and after conducting the same, strived to lodge FIR but the police did not lodge the same. So he sent the report to Superintendent of Police, Udham Singh Nagar on 26.10.2005 but in vain. In the above circumstances, he filed the criminal complaint case, as stated above. He examined himself u/s 200 Code of Criminal Procedure His wife Tarkeet Jahan

was examined as CW1 and Gulam Nabi was examined as CW2. Considering the statement of complainant as well as injured Tarkeet Jahan supported by statement of CW2 Gulam Nabi, learned Magistrate passed an order of cognizance on 24.11.2005 and summoned the applicants for the offence u/s 452, 354, 323, 504, 506 Indian Penal Code.

4. It has been contended by learned Counsel for the applicants that this complaint is a counter blast of complaint case No. 764 of 2005, which was filed by Rafiq Shah (applicant No. 1) against Ale Nabi on dated 17.10.2005. The incident of that complaint was of 13.10.2005 with the facts that Ale Nabi along with two others was digging earth behind the wall of the house of Rafiq Shah. The land was being so dug to make electric cable underground, on being resisted, Ale Nabi along with his companions beat Noor Jahan (wife of Rafiq) with kick, fist and batten. The police did not report the matter as cognizable instead police report the matter only as NCR (non cognizable report) and nothing was done by the police towards the investigation, so after medical examination of Noor Jahan, criminal complaint case No. 764 of 2005 was filed. The Magistrate concerned, after recording the statement of the complainant and the witnesses, passed order of cognizance dated 24.10.2005 against accused Ale Nabi, Tasdooq Mulla and Raju.

5. It has been contended by learned Counsel for the applicants that the instant complaint case No. 800 of 2005 is a counter blast of the cognizance order passed against Ale Nabi. He has placed reliance upon the precedent of Hon'ble Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Hon'ble Apex Court laid down the circumstances and categories of cases, appropriate to invoke the powers of High Court u/s 482 Code of Criminal Procedure. The Hon'ble Apex Court inter alia held that where a criminal proceeding is manifestly attended with mala fide on and / or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court should exercise its powers u/s 482 Code of Criminal Procedure.

6. The complaint filed by Ale Nabi appears to be of such category, for the reason that Ale Nabi has described the incident, in his statement u/s 200 Code of Criminal Procedure, to that of 25.10.2005 while his wife Tarkeet Jahan has described the incident to that of 16.10.2005. Besides this, injury report of Tarkeet Jahan does not inspire confidence, as all the injuries allegedly to be inflicted upon the body of Tarkeet Jahan by four applicants are quite superficial and can be managed to have been created falsely.

7. In view of the above, this petition has merit and is liable to be allowed. The petition is, accordingly, allowed. Impugned order of cognizance dated 24.11.2005 as well as proceedings in criminal case No. 800 of 2005 are hereby quashed.