
(2009) 03 UK CK 0013
In the Uttarakhand High Court
Case No : Criminal Revision No. 127 of 2006

Ravi Chaudhary

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 147, 148, 323, 325, 427

Citation : (2010) 1 NCC 55 : (2009) 2 UC 1122

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : S.K. Aggarwal, assisted by, Tapan Singh, for the Appellant; M.A. Khan, Brief Holder for State for Respondent No. 1, U.K. Uniyal assisted by, Sandeep Kothari, for the Respondent

Final Decision : Allowed

Judgement

Dharam Veer, J.—This criminal revision, preferred by the revisionist under Sections 397/401 of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Code of Criminal Procedure), is directed against the judgment and order dated 03.06.2006 passed by Sessions Judge, Hardwar in Criminal Revision No. 281 of 2005, Pradeep Paliwal and Ors. v. State of Uttaranchal whereby the revision preferred by Respondent Nos. 2 to 5 has been allowed and judgment and order dated 1.9.2005 passed by Judicial Magistrate, Hardwar has been set aside.

2. Heard Sri S.K. Aggarwal, Sr. Adv. assisted by Sri Tapan Singh, Adv. for the revisionist, Sri M.A. Khan, learned Brief Holder for the State/Respondent No. 1, Sri U.K. Uniyal, Sr. Adv. assisted by Sri Sandeep Kothari, Adv. for Respondent Nos. 2 to 5 and perused the entire material available on record.

3. In brief, the facts of the case are that revisionist-Ravi Chaudhary had filed a case of injunction against the Respondents-Sanjay Paliwal and others in the court of Civil Judge (Senior Division) Hardwar regarding Plot No. 15 situated in New

Hardwar in which the Civil Judge (S.D.) had passed injunction order in favour of the revisionist and against the Respondents. On 5.7.2003 at about 1:30 P.M. the Respondents along with their accomplice came over the land in dispute and caused injuries to Pradeep Singh and Gajraj Singh with fists and kicks with the intention to kill them. It was further stated that Respondents/accused persons Bittoo Paliwal and Pradeep Paliwal also fired upon the revisionist and his servant-Jakir, however they could manage to save their life. It was further stated that those four Respondents/accused persons beaten Gajraj Singh badly and also damaged the constructed wall and they also fired on the wheel of Tractor. After that the complainant-revisionist Ravi Chaudhary informed the police on telephone. Then the police came on the place of occurrence and then Gajraj Singh was taken to the hospital. The complainant has also lodged the FIR on the same day i.e. on 5.7.2003 at 4:45 RM. at RS. Jwalapur, Distt. Hardwar and the case was accordingly registered against the accused persons. Injured Gajraj Singh was medically examined in the Govt. Hospital, Jwalapur and in the supplementary report, fracture was found in his 10th rib right side. After the investigation of the above-said incident, the Investigating Officer submitted the final report. On the final report submitted by the I.O., the complainant/revisionist Ravi Chaudhary filed a protest petition. On that protest petition, learned Judicial Magistrate, Hardwar after hearing and appreciating the material on record, vide his judgment and order dated 01.09.2005 summoned the Respondents-Sanjay Paliwal, Pradeep Paliwal, Rajiv Paliwal and Keshwendra Kripal Paliwal @ Bittoo under Sections 147/148/323/325/427 IPC. Against the said judgment and order dated 1.9.2005, Respondents preferred a criminal revision before Sessions Judge, Hardwar. Learned Sessions Judge, Hardwar vide his judgment and order dated 3.6.2006 allowed the said revision and set aside the judgment and order dated 1.9.2005 passed by Judicial Magistrate, Hardwar. Feeling aggrieved with the aforesaid judgment and order dated 3.6.2006 passed by Sessions Judge, Hardwar, the revisionist/complainant has filed the present revision before this Court.

4. Sri S.K. Aggarwal, Sr. Advocate has solely argued that the Respondents were summoned by the Judicial Magistrate, Hardwar vide his judgment and order dated 1.9.2005 on the basis of protest petition filed by the revisionist. But in the revision filed before Sessions Judge, the revisionist/complainant-Ravi Chaudhary was riot made party and even he had got no information about the filing of the said revision. Hence, the order passed by Sessions Judge is against law and principles of natural justice. In support of this argument, he has cited a judgment rendered by Hon"ble SC in the case of Mosiruddin Munshi Vs. Md. Siraj and Others, and relied on para 4 which is reproduced as under:

4. We have heard the learned Counsel for the parties and gone through the record. The broad facts stated above have not been denied. It, therefore, stands uncontroverted that the proceedings against the Respondent-accused had been quashed without notice to the Appellant, who was the original complainant We are, therefore, of the opinion that the order of the learned Single Judge

impugned before us must be set aside and we order accordingly. We also remit the case to the High Court for a fresh decision in accordance with law. The appeal is accordingly allowed.

5. It is admitted by learned Counsel for both the parties that the revisionist/complainant-Ravi Chaudhary was not arrayed as a party in the revision filed before the Sessions Judge, Hardwar. It is, therefore, stands uncontroverted that in the revision filed before the Sessions Judge where the order passed by Judicial Magistrate, Hardwar was set aside, the revisionist was not arrayed as a party, on the basis of whose protest petition, the Respondents were summoned. No order shall be made to the prejudice of any person unless he had an opportunity of being heard either personally or by pleader in his own defence. In the present case, neither the revisionist was arrayed as a party nor he was informed and the revision before the Sessions Judge was heard in his absence, though the order against which the revision was filed by the Respondents, was passed on the protest petition moved by the revisionist/complainant before the Judicial Magistrate. Hence, the order passed by Sessions Judge, Hardwar dated 3.6.2006 is not sustainable in the eyes of law and deserves to be set aside.

6. For the reasons recorded above, the revision is allowed and the judgment and order dated 3.6.2006 passed by Sessions Judge, Hardwar is set aside. The case is remitted to the Sessions Judge, Hardwar to decide the case afresh on merit after affording opportunity of hearing to the parties in accordance with law.