
(2020) 11 UK CK 0005

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1896 Of 2018

Rt. Rev. Vijay Mantode & Others

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482

Indian Penal Code, 1860 — Section 419, 420, 467, 468, 471

Citation : (2020) 11 UK CK 0005

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Sushil Shukla, Pankaj Sharma, D.N. Sharma, Shivangi Gangwar, R.P. Nautiyal

Final Decision : Dismissed

Judgement

Lok Pal Singh, J

1. By means of present application under Section 482 Cr.P.C., the applicants seek to quash the summoning order dated 16.05.2018, as also the entire criminal proceedings of Criminal Case no. 2534 of 2018 (arising out of case crime no. 278 of 2016), State Vs Vijay Mantode & others, under Sections 419, 420, 467, 468, 471 IPC, pending in the court of Addl. Chief Judicial Magistrate, Haldwani, District Nainital.

2) Facts leading to filing of present case are that All Saints College Society, Nainital was formed and registered under the provisions of Societies Registration Act in the year 1948. Likewise, another Society named as 'Sherwood Diocesan College Society, Nainital' was also formed and registered in the year 1952 under the provisions of Societies Registration Act. Both the societies were established by the persons having faith in Christianity and with the objects to give Christian education and opportunities for teaching, witness and worship according to the faith, doctrine and practices of the General Council of the Church of India, Burma and Ceylon (in short CIPBC). The Bishop of Lucknow was the Chairman of the

governing body of both the societies. He was also the founding member of the societies. During the period 1945 to 1954, various properties comprising of Churches, Schools, Hospitals, Shelters etc. which were being held by Christian Missionaries, organization including the properties of Sherwood Diocesan College Society and All Saints College Society, Nainital were transferred by their respective associations or trusts in favour of Lucknow Diocese Trust Association (for short LDТА) by way of legally executed instruments of transfer for entrusting their management and legal ownership, however, only for the benefits of the Church of India. Since then, the LDТА is managing, controlling and running the properties so entrusted to it.

3) After the superannuation of his predecessor Rt. Rev. J.K. Dass in the year 2007, application no. 1 was elected and appointed as the Bishop of Lucknow, Diocese of Lucknow on 13.01.2008. On 15.01.2008, the religious body i.e. Lucknow Diocesan Council held its meeting in Lucknow and resolved to elect Rev. J.K. Dass, Rev. Yogendra Kumar, Deepak Kumar (applicant no. 3), Duryodhan Prasad @ D. Prasad (applicant no. 4) as members of the Council. Arvind Singh was elected as Member Secretary. Being Bishop of Lucknow, applicant no. 1 was elected as Chairman of the Council. On 15.01.2008 itself, the Chairman of LDТА issued a general notice calling for extra ordinary Annual General Meeting of the Board of Directors and Members of LDТА to be held on 06.02.2008 at Lucknow. On 06.02.2008 several resolutions were passed by majority votes in the extra ordinary Annual General Meeting at Lucknow and the members who were claiming to be in communication with other Churches particularly the CNI and who had formed a new Association namely Agra Diocese Trust Association (for short ADТА), a non-profit religious company allegedly for managing the properties falling within the territory of Diocese of Agra; or were claiming the official posts in the LDТА via the CNI were expelled from the ordinary membership. Five members, including applicant no. 3, applicant no. 4 were inducted in the Management Committee as per its bye-laws. The applicant no. 1 consented to continue as the Chairman of the LDТА with Arvind Singh as its Secretary. On 19.01.2009, in the Annual General Body meeting of the Sherwood Diocesan College Society, Nainital, the election of the Governing Body was held and applicant no. 2 was appointed as its Secretary with other office bearers.

4) On 15.06.2009, LDТА instituted a civil suit, being suit no. 1304 of 2009, The Church of India through its Attorney D. Prasad & another Vs Mr. Ajay Jairaj Stephen and others, along with application for leave to file urgent suit during summer vacations. The said suit was instituted in the court of Civil Judge (Sr. Div.), Kanpur Nagar against 17 defendants, including the members of CNI and their association namely ADТА, as these defendants were claiming themselves to be in management of LDТА and were interfering in the functioning of the day-to-day management of the institution / properties of the LDТА, which was for the Church of India. It was alleged that these defendants were also entering into several agreements to sell properties belonging to or held in trust by the LDТА for the benefits of Church of India. The said suit was accompanied with an

application seeking interim injunction. When the application for leave to institute the civil suit was rejected by Civil Judge (S.D.), Kanpur Nagar, plaintiff / LDTA approached the Allahabad High Court by preferring WPMS no. 1016 of 2009. The writ petition was disposed of finally on 18.06.2009 at the admission stage itself directing that until disposal of pending interim injunction application by the court below the defendants shall not interfere in the management, working and control of Diocese of Lucknow or the LDTA or its properties and institutions which were being managed by the members of the Management of Committee duly elected on 15.01.2008 in the meeting held at Lucknow as confirmed on 06.02.2008 by the Standing Committee of Lucknow Diocesan Council.

5) Thereafter, the list of Governing Bodies of both the Societies were got registered and recorded in the office of Deputy Registrar (Firms, Societies and Chits), Haldwani for the period 2009-2010. The controversy involved in present C-482 petition is only in regard to the Sherwood Diocesan College Society, Nainital. Subsequently, one Rt. Rev. Morris E Dan, claiming himself to be also the Bishop of Lucknow, Diocese of Lucknow, but falling under Church of North India filed his objections dated 13.09.2010 against the registration of list of body of management in respect of both the societies. By way of objection, Rt. Rev. Morris E Dan also put up his claim over the management of aforesaid two societies by filing his own list of members of its Governing Bodies. He claimed himself to have been elected under the Constitution of Church of North India, which he further claimed to have been created on the basis of alleged merger of 6 Churches. Furthermore, he claimed himself to have been appointed as Chairman of LDTA under some alleged amended MOA of the said LDTA effected in the year 1988 wherein the Church of India was alleged to have been replaced with the Church of North India. Surprisingly, third person Rt. Rev. S.R. Cutting also claiming over the management of both the societies in the capacity of Bishop of Agra, Diocese of Agra, Church of North India approached the office of Dy. Registrar on 21.10.2010 and filed his own application seeking renewal of registration of All Saints College Society, Nainital, as according to him this society fell within his territorial jurisdiction since the properties of Churches of the LDTA have been divided in two Diocese namely Diocese of Lucknow and Diocese of Agra under the constitution of Church of North India, which he too claimed to have been successor of Church of England in India and the merger of 6 Churches in the year 1972.

6) The Dy. Registrar (Firms, Societies and Chits), Haldwani vide order dated 28.03.2011 cancelled the registration of list of Governing Body of the two societies submitted earlier under the Chairmanship of applicant no. 1 and held that applicant no. 1 does not appear to be genuine Bishop of Lucknow, Diocese of Lucknow. It was directed that both Rt. Rev. Morris E Dan and Rt. Rev. S.R. Cutting should jointly settle their dispute and the registration of both the societies be carried out under the Chairmanship of Rt. Rev. S.R. Cutting, who appears to be the Bishop of Lucknow, Diocese of Lucknow, Church of North India. On 07.04.2011 both the parties moved a joint application before the Deputy

Registrar (Firms, Societies and Chits), Haldwani, whereby Rt. Rev. Morris E Dan, claiming himself to be the Bishop of Lucknow, Diocese of Lucknow, Church of North India withdrew his earlier claim on both the societies and requested the Dy. Registrar to register and renew the list of Governing Bodies of the societies under the Chairmanship of Rt. Rev. S.R. Cutting as being the Bishop of Agra, Diocese of Agra, Church of North India. Acting on the joint letter dated 07.04.2011, the Dy. Registrar allowed the registration and renewal in respect of both the societies. Feeling aggrieved, against the orders dated 28.03.2011 and 07.04.2011, applicant no. 2 in his capacity as Secretary of the Committees of Management of both the societies approached this Court by preferring WPMS no. 1113 of 2011. WPMS no. 1173 of 2011 and 1040 of 2012 and 1459 of 2012 were also preferred by the Principal of both the societies as also by the persons claiming to be members of Anglican Church of India challenging the order dated 28.03.2011, passed by the Deputy Registrar.

7) It is stated that all the four writ petitions were finally decided by this Court by common judgment and order dated 19.03.2014, whereby the order impugned was set aside with the observation that the matter can only be adjudicated by the competent civil court and the parties were directed to approach the court below. The judgment and order dated 19.03.2014 was assailed by All Saints College Society, Nainital in Special Appeal no. 129 of 2014, which was affirmed by the Division Bench of this Court vide judgment and order dated 18.06.2014. Thereafter, two separate writ petitions, being WPMS no. 1430 of 2014 and 1749 of 2014, were filed by the Principals of Sherwood Diocesan College and All Saints College against applicant no. 1 and others with the prayer that applicants and others be restrained from interfering in the affairs of their respective schools. This Court vide orders dated 23.06.2014 and 30.07.2014 disposed of the writ petitions reiterating its order dated 19.03.2014, passed in WPMS no. 1173 of 2011, as affirmed in Special Appeal no. 129 of 2014. Applicant no. 1 was directed not to interfere in the working of the schools till then. It is alleged that the criminal proceedings initiated by the complainant / respondent no. 2 against the applications in respect of offences punishable under Section 419, 420, 467, 468, 471 IPC are nothing but abuse of process of the Court.

8) After investigation, a chargesheet was filed against the applicants for the offences punishable under Sections 419, 420, 467, 468, 471 IPC, which is being assailed by the applicants through present application under Section 482 of Cr.P.C.

9) Heard learned counsel for the parties and perused the material brought on record.

10) Learned counsel appearing on behalf of the applicants vehemently argued that the complainant has not averred anywhere in the FIR that the lists submitted by him were ever recorded or registered in the office of the Deputy Registrar (Firms, Societies and Chits), Haldwani. It is contended that the dispute is between the Church of India and Church of North India, as both were claiming

and counter claiming over the management of LDТА and also over the societies running the prestigious schools in Nainital and civil litigation is going on between the parties. It is further argued that instead of pursuing civil remedies going on between the parties, the members of the CNI, who were trying to illegally take over the management of the LDТА and all properties of the Church of India being managed by the LDТА, have lodged the criminal proceedings against the applicants.

11) Learned counsel further argued that the Church of India alone is the legal successor of all the missionaries properties held by Church of England in India and the Bishop of Lucknow can also be the Chairman of either the LDТА or any other societies existing for management of such schools, hospitals or other institutions established by the Church of India. It is contended that criminal proceedings are not a shortcut of other remedies available in law and such criminal proceedings should not be permitted to be used for settling scores or pressurizing parties to settle civil disputes. It is the submission of learned counsel for the applicants that even if contents of FIR be presumed to be true, no offence, even prima facie, is made out against the applicants.

12) Per contra, learned counsel for the complainant / respondent no. 2 would submit that applicant no. 1 misrepresented himself to be the Bishop of Lucknow, Diocese of Church of India and has filed false, fabricated and forged documents and alleged list of members of governing body of the two societies with the intention to control the management of the two prestigious institutions being run by the said societies. He would further submit that the applicants made false claims and representations before the Dy. Registrar (Firms, Societies and Chits), Haldwani and filed forged, fabricate and manipulated documents for illegal gains and to usurp the properties of said societies. It is contended that the trial court has rightly summoned the applicants and had taken cognizance on the basis of evidence collected by the Investigating Officer during investigation.

13) As per FIR, which was lodged by complainant / respondent no. 2, it has been alleged that applicant no. 1, who claims himself to be the Bishop of Lucknow, Diocese of Lucknow and Chairman of Lucknow Diocesan Trust Association has formed a gang, including applicant nos. 2 to 4 also. It was further alleged that they prepared forged and fraudulent documents and on the basis of such documents mislead the Dy. Registrar (Firms, Societies and Chits), Haldwani. It has further been alleged that on 19.01.2009, in the Annual General Body meeting of the Sherwood Diocesan College Society, Nainital, the election of the Governing Body was held and the applicant no. 1 showed some dubious persons, including applicant nos. 2 to 4, as Directors and office bearers of LDТА and thereby fraudulently presented the documents before the Dy. Registrar, claiming himself to be the Chairman of LDТА. It was alleged that applicant no. 1 presented a letter dated 01.04.2014 before the Dy. Registrar (Firms, Societies and Chits), Haldwani in his capacity as Chairman of LDТА showing other applicants as Directors of LDТА in order to take over the management of

Sherwood Diocesan College Society and All Saints College Society on different dates with the intention to illegally grab these properties.

14) Learned counsel for the applicants drew attention of this Court towards a judgment rendered by Hon'ble Apex Court in Mohammed Ibrahim and others Vs State of Bihar and another (2009) 8 SCC 751 and submitted that in the instant case a matter which is essentially and purely civil in nature, has been given a cloak of criminal offence. Paragraph no. 8 of the judgment is excerpted hereunder:

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil dispute..."

15) In Mohammed Ibrahim and others Vs State of Bihar and another (2009) 8 SCC 751 the facts of the case are that first accused executed a sale deed in favour of second accused, claiming that the property being sold belongs to him. Second respondent filed a criminal complaint that the title to the property sold, belonged to the second respondent and, therefore, first accused had committed offences under Sections 467 and 471 IPC. The plea of the first accused was that the property was mutated in his name and he was in possession and also paying land revenue for it. The issue before the Hon'ble Apex Court was whether the first accused had committed an act of forgery even if the facts alleged by the second respondent were accepted to be true. Trial court as well as High Court dismissed the plea of the first accused for quashing the criminal complaint. The Hon'ble Supreme Court reversed the decision and partly allowed the appeal.

16) The ratio of judgment (supra) is not applicable to the facts and circumstances of the present case. In the instant case, charge sheet was filed against the applicants after recording statements of 12 witnesses, out of which 7 witnesses are witnesses of facts. The Investigation Officer of the case has done detailed investigation in the matter and thereafter submitted charge sheet against the applicants. Summons were issued to the applicants on the basis of statements of the witnesses recorded under Section 161 Cr.P.C. Here, applicant no. 1, claiming himself to be the Bishop of Lucknow, Diocese of Lucknow and Chairman of Lucknow Diocesan Trust Association has formed an association, including applicant nos. 2 to 4 also. It was alleged that they prepared forged and fraudulent documents and on the basis of such documents mislead the Dy. Registrar (Firms, Societies and Chits), Haldwani. Also, in the Annual General Body meeting of the Sherwood Diocesan College Society, Nainital, the election of the Governing Body was held and the applicant no. 1 showed some dubious

persons, including applicant nos. 2 to 4, as Directors and office bearers of LDТА and fraudulently presented the documents before the Dy. Registrar, claiming himself to be the Chairman of LDТА. There is nothing on record which suggests that the criminal proceedings were initiated against the applicants in order to settle score or to pressurize the parties to settle civil disputes going on between them in various courts. Rather it appears that the applicant no. 1 misrepresented himself as Bishop of Lucknow, Diocese of Church of India and filed false, fabricated and forged documents and also furnished alleged list of members of governing body with an ill intention to take control over the management of the two prestigious institutions in Nainital run by respective societies. Thus, it cannot be said that a case of civil nature has been given the colour of criminal case.

17) Their Lordships of Hon'ble Apex Court in Syed Askari Hadi Ali Augustine Imam & another Vs State (Delhi Administration) & another (2009) 5 SCC 528 have held that in a given case, a civil proceedings as also a criminal proceeding may proceed simultaneously. Paragraph nos. 21 and 22 of the judgment are excerpted hereunder:

"21. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

22. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible..."

18) Having heard learned counsel for the parties and on careful perusal of the documents brought on record, this Court is of the considered view that whether, the applicants are innocent or not, is required to be seen by the trial court, after recording the evidence of the witnesses. It is not just and proper on the part of this Court to come to the conclusion that the applicants are innocent with half baked evidence before it, at this stage.

19) It is settled position in law that at the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a prima facie case is made out for summoning the accused persons.

20) Hon'ble Supreme Court in the case of Sonu Gupta vs Deepak Gupta and others (2015) 3 SCC 424 has held that prima facie satisfaction of the Magistrate concerned is sufficient for summoning the accused. The relevant paragraphs of said judgment are excerpted here-in-below:

"7. Considering the stage at which the criminal complaint is pending and the nature of proposed order, this Court would not like to express any definite opinion on the merits of the allegations made in the complaint petition or upon the defence taken by the accused persons before the courts below or in this Court lest it prejudices one or the other party in future.

8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not."

21) Hon'ble Apex Court in *Amit Kapoor vs Ramesh Chander and another* (2013) 1 SCC (Cri) 986 has laid down certain principles in respect of exercise of jurisdiction under Section 482 of Cr.P.C. One of the principle 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 power is to be exercised *ex debito justitiae*, i.e., to do real and substantial justice for administration of which alone, the courts exists.

22) The Hon'ble Apex Court in the case of *Rajiv Thapar and others vs. Madan Lal Kapoor* (2013) 3 SCC 330 has further held as under:-

"28. The High Court, in exercise of its jurisdiction under Section 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."

23) Since, prima facie case is made out against the applicants, the learned Magistrate after perusal of the complaint and the material placed before him, has rightly taken cognizance and summoned the applicants to face the trial in respect of the offences punishable under Section 419, 420, 467, 468, 471 IPC. I do not find any illegality, perversity or jurisdiction error in the orders under challenge, therefore, the same needs no interference at this stage.

24) In view of the foregoing discussion, criminal misc. application filed under Section 482 of Cr.P.C. fails, and is hereby dismissed.