
(2007) 04 UK CK 0055

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Petition No. 215 of 2007

Sandeep and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2007) 4 UC 502

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Manish Arora, for the Appellant; Prabhakar Joshi, Brief Holder for State, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the parties.

2. By means of this petition, moved u/s 482 of the Code of Criminal Procedure, 1973, the Petitioners have sought quashing of the cognizance order dated 15-02-2005, passed by learned Civil Judge (Junior Division)/Judicial Magistrate, Laksar, District Haridwar, in criminal case No. 65 of 2005; State v. Manga and Ors. relating to offences punishable u/s 147, 148, 149, 323, 307, 504, 506 of I.P.C., police station Khanpur, District Haridwar.

3. It appears that some incident had taken place on 30th September 2004, in Sadhan Sahakari Samiti, Goverdhanpur, within the limits of police station Khanpur, District Haridwar. A first information report was lodged by one Saadab Ali, on the same day, at about 14:10 P.M. with the police station against unknown persons, which was registered as crime No. 49 of 2004. The record further reveals that a first information report containing cross version was lodged by Preetam Singh (one of the present Petitioners) in respect of the same incident at 09:05 P.M., on the same day. The said first information report was registered as crime No. 49-A of 2004, in respect of offences punishable u/s 147, 148, 149,

323, 307 of I.P.C. against some 26 accused. Nay, the matter did not end here. Yet another first information report was lodged on that very day i.e. 30-09-2004, at about 09:30 P.M., in respect of same incident by one Nigrodh Singh (present Respondent No. 2) against some 45 accused. This third first information report was registered as crime No. 49-B of 2004, relating to offences punishable u/s 147, 148, 149, 323, 307, 504, 506 of I.P.C.

4. After investigation, it appears that a charge sheet was filed arising out of crime No. 49 of 2004, against 45 accused (including the four Petitioners) in respect of offences punishable u/s 147, 148, 149, 353, 336, 307 of I.P.C. and one u/s 07 of the Criminal Law Amendment Act. Record further shows that learned Magistrate took cognizance on this charge sheet on 15-02-2005 and the same was registered as criminal case No. 63 of 2005; State v. Jogender and Ors. On the cross first information report, a separate charge sheet was filed against 26 accused. The said case was registered as criminal case No. 64 of 2005. To this extent, there is no technical error committed by the trial court as it has to see which of the parties were the aggressors, after recording the evidence. Strangely, yet another charge sheet was filed purporting to have been arisen out of investigation in crime No. 49-B of 2004, against 45 accused (including the present four Petitioners) in respect of offences punishable u/s 147, 148, 149, 323, 307, 504, 506 of I.P.C. The Magistrate has taken cognizance on this charge sheet also on 15-02-2005 and registered the case as criminal case No. 65 of 2005. As such, the learned Magistrate appears to have taken cognizance against the Petitioners twice, in respect of the same offences. The cognizance had been taken in criminal case No. 63 of 2005 against the four Petitioners, namely Sandeep S/o Kavarpal; Pradeep S/o Kavarpal; Jogender S/o Rafal Singh and Preetam S/o Hariram. It was not open for the Magistrate to take cognizance with regard to these Petitioners in respect of same offences in criminal case No. 65 of 2005. Here, the Magistrate has committed error of law in taking cognizance twice as against Petitioners in the subsequent charge sheet.

5. Therefore, the petition u/s 482 of the Code of Criminal Procedure 1973, is allowed to the extent of prosecution of the Petitioners, namely Sandeep S/o Kavarpal; Pradeep S/o Kavarpal; Jogender S/o Rafal Singh and Preetam S/o Hariram, in subsequent criminal case No. 65 of 2005. Accordingly, to that extent as against the present four Petitioners named above, the proceedings in subsequent criminal case No. 65 of 2005, are hereby quashed. However, the proceedings in respect of accused whose names did not figure in criminal case No. 63 of 2005, the proceedings may go on. Also, prosecution of Petitioners in criminal case No. 63 of 2005 shall remain undisturbed.