
(2011) 07 UK CK 0175

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 599 of 2011

Saurabh Yadav

APPELLANT

Vs

State of Uttarakhand and Gagan Yadav

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 216, 319, 482
Penal Code, 1860 (IPC) — Section 323, 452, 504

Citation : (2011) 2 NCC 500 : (2011) 2 UC 1372

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this petition moved u/s 482 of Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure) the Petitioner has sought quashing of the order dated 16.10.2010, passed by II Special Judicial Magistrate, Haridwar, in criminal case No. 29 of 2010, whereby accused Naresh, Manju and Shubham are summoned u/s 319 Code of Criminal Procedure, to face the trial. The Petitioner has further challenged order dated 28.05.2011, passed by III Fast Track Court/ Additional Sessions Judge, Haridwar, in criminal revision No. 456 of 2010, affirmed the order passed by the Magistrate.

3. Learned Counsel for the Petitioner submitted that after investigation charge sheet was filed against two of the five accused. No. offence is said to have been made out against Naresh, Manju and Shubham. But they have not challenged the order.

4. Perusal of the impugned orders show that as against present Petitioner Saurabh Yadav No. order u/s 319 Code of Criminal Procedure, is passed. As against him there was already a charge sheet filed by the Investigating Officer.

5. Learned Counsel for the Petitioner argued that the criminal proceedings in

respect of offences punishable under 323, 504 Indian Penal Code should have been proceeded as a criminal complaint case. Attention of this Court is drawn to Section 2(d) of Code of Criminal Procedure. Said provision defining "complaint" provides that the word "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report.

6. The above provision contained u/s 2(d) itself makes it clear that police report is not to be treated as criminal complaint. Admittedly as against the Petitioner the Investigating Officer had submitted the charge sheet. As far as framing of charge against accused in respect of offence punishable u/s 452 Indian Penal Code, is concerned, the trial court has the power to alter the charge u/s 216 Code of Criminal Procedure, provided there is material on record to frame the charge.

7. In the above circumstances, this Court does not find any force in this petition, and the same is liable to be dismissed. The petition u/s 482 Code of Criminal Procedure, is dismissed.