
(2011) 09 UK CK 0071

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 728 of 2008

S.C. Mathur and Pratap Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 397
Penal Code, 1860 (IPC) — Section 26, 332, 353, 447

Citation : (2011) 09 UK CK 0071

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—Since both the petitions entail the same controversy which revolves for a piece of land measuring 4.50 Bigha of Khasra No. 2353 situated in village Arcadia, Pargana Pachwadoon, District Dehradun, hence are being disposed of by the single judgment and order.

2. It is pertinent to mention that controversy at every rung of the litigation between the parties, right from moving application to the S.S.P. concerned regarding the incidents which allegedly happened on 20.1.2006/23.1.2006 to the filing of these petitions against the impugned order of the Magistrate dismissing the complaint case No. 161/2007 filed by Sri S.C. Mathur and, dismissing the complaint case No. 866/2006 filed by Sri Pratap Singh, is identical except the variations of the dates, therefore, the mentioning of the dates of each stage in either case will be saved in the judgment as far as possible. It is also relevant to mention that Sri S.C. Mathur is the master and allegedly, the owner in possession of the land in question looked after by his agent Sri Pratap Singh at the spot, while on the other hand, the same is claimed to be a notified forest land, as revealed from Annexure-1 of the counter affidavit filed by Sri Vishwapal Singh, Range Officer, Forest Division, Dehradun.

3. The controversy cropped up when Sri S.C. Mathur displayed a board divulging

his ownership and possession over the land and started raising construction thereon. In order to raise the construction, the material was collected and dumped at the spot. This fact came into the notice of the forest officials and Sri Rajpal Singh, Beat Officer, who was primarily responsible to look after and take care of the forest land, reported the matter to his superiors.

4. It appears that on the directions of the superiors, the forest officials, who have been impleaded as Respondent Nos. 2 to 5 in both the petitions, went at the spot and removed all the construction material and structure raised thereupon after much resistance extended by Pratap Singh and S.C. Mathur.

5. Pratap Singh moved an application to the S.S.P. on the next day, i.e. on 24.1.2006 obviously at the behest of his master S.C. Mathur but that went in vain, so Pratap Singh moved an application u/s 156(3) Code of Criminal Procedure on dated 25.1.2006. It appears that the learned Magistrate, after getting the matter primarily enquired at the end of police, was not inclined to exercise his powers, as vested in him u/s 156(3) Code of Criminal Procedure and ordered for the registration of the case as a complaint instead, vide order dated 27.2.2006. This order was made by In-charge C.J.M., so the statement of complainant Pratap Singh was not recorded immediately, inasmuch as the learned Magistrate, who passed the order dated 27.2.2006, was only working as an in-charge of the Court having original jurisdiction, i.e. of C.J.M. Fortiori, the objection of the learned Counsel that the statement could have been recorded on the same day, is not tenable because there is no proof that the complainant was present in person on the date when the application was ordered to be treated as a complaint u/s 200 Code of Criminal Procedure. Otherwise also, there is no mandatory provision, as envisaged u/s 200 Code of Criminal Procedure to make it obligatory upon the Magistrate to record the statement of the complainant on the same day. This way, the statement of the complainant was recorded on 1.6.2006 for sundry reasons, not clear before this Court.

6. Complainant Pratap Singh produced his witness Janardan Dass to be examined on 23.8.2006 u/s 202 Code of Criminal Procedure and the learned Additional C.J.M., being dissatisfied with the genuineness of the facts of complaint, dismissed the same u/s 203 Code of Criminal Procedure on dated 16.9.2006. This order of dismissal was challenged before the Sessions Judge, Dehradun by filing a revision No. 135/2006 and after hearing the learned Counsel of the revisionist, the Sessions Judge too dismissed the same.

7. For the controversy over the same plot of land, one application was moved by S.C. Mathur on 21.1.2006 against the Forest Ranger along with his 3-4 companions, unnamed, that all they dismantled the Board, which stood upon his land. This application met with the same fate as that of moved by Pratap Singh on 24.1.2006.

8. Sri S.C. Mathur filed a complaint case No. 161 of 2007 on dated 5.2.2007 alleging that the said plot was purchased by him from one Sri Gajendra Dutt

Uniyal and the forest officials- Respondent Nos. 2 to 5 (similar in both the petitions) were intervening his ownership cum possession over the land. There were other allegations too in the complaint, but the same after recording the statement of the complainant u/s 200 Code of Criminal Procedure and his witness u/s 202 Code of Criminal Procedure, met with the same fate of dismissal u/s 203 Code of Criminal Procedure on dated 11.4.2007 by Special Judicial Magistrate, who has passed an elaborate impugned order. Sri S.C. Mathur filed a revision No. 36/2007 in the court of Sessions Judge, which was also dismissed on 4.10.2008, being meritless.

9. The other scenario of the controversy is that when the forest officials, probably noticing the underway enquiry on the application moved by Pratap Singh, too lodged an FIR on dated 16.2.2006 regarding the same incident of 23.1.2006 against S.C. Mathur and Pratap Singh for the offence of Sections 447, 332, 353 Indian Penal Code r/w Section 26 of Forest Act and 2/3 P.D.P. Act. It is not clear before this Court as to what happened further after lodging of the report by Sri R.K. Mishra, Divisional Forest Officer, Dehradun. The contents therein were that these two persons, S.C. Mathur and Pratap Singh, misbehaved with the forest officials and voluntarily caused hurt to deter the public servants while they were performing their duty to remove the encroachment over the notified forest land.

10. Be that as it may, the moot question before this Court is whether these petitions, moved u/s 482 Code of Criminal Procedure, after the dismissal of the criminal revisions against the impugned orders which were respectively passed in the criminal complaint cases No. 495/2006 and 161/2007, are maintainable before this Court. Learned Counsel on behalf of the Petitioners advanced the construction of Section 482 Code of Criminal Procedure with the contention that the powers u/s 482 Code of Criminal Procedure are plenary one and these can and should be used by the Court to check the abuse of the process of law, while the powers of the revision, exercised by the Sessions Judge u/s 397 Code of Criminal Procedure are limited. This Court is unable to agree with the said contention for the reason that Section 399(1) Code of Criminal Procedure defines the powers of the Sessions Judge while adjudicating a revision and it envisages that the powers of the Sessions Judge are equal to that of the High Court. Therewithal, the Hon'ble Apex Court in the case of " Dharampal and others Vs. Smt. Ramshri and others, " has dealt with the similar situation when the revision once adjudicated by the Sessions Judge, then filing of the second revision under the garb of Section 482 Code of Criminal Procedure was held to be barred unequivocally. The Hon'ble Apex Court has opined that when the Sessions Judge dismissed a revision u/s 397(3) Code of Criminal Procedure, then it is well settled that the powers vested in the High Court u/s 482 Code of Criminal Procedure cannot be utilized at the name of being inherent powers. Hence, the High Court had clearly erred in entertaining the second revision at the instance of party and on this short ground itself, the order of the High Court exercising the powers u/s 482 Code of Criminal Procedure was set aside.

11. As far as the merit of the case is concerned, the contention of learned Counsel for the Petitioners that the Magistrate was in error by restraining from making an order u/s 156(3) Code of Criminal Procedure and registering the application as a complaint case instead, in the opinion of this Court, is not tenable, inasmuch as, the Magistrate is not bound in each and every case to make the order on any application moved u/s 156(3) Code of Criminal Procedure for the police, directing it to register and investigate the matter. It is the discretion of the Magistrate, as adverted by the use of the word "may" by the legislature and after recording the statements u/s 200 and 202 Code of Criminal Procedure, again it is not mandatory for the Magistrate to take cognizance in every matter and issue the process to the prospective accused. It is the discretion of the Magistrate to be exercised, judging the substantiality in the facts from case to case. If the allegations are of shallow nature with all embellishment and exaggerative version, then the Magistrate is well within his powers to refuse from passing the order of cognizance and dismiss the complaint instead.

12. In view of what has been stated above, this Court is not inclined to allow the petitions, which are meritless altogether. Resultantly, both the petitions are dismissed.

13. Let a copy of the order be placed in each of the petition.