
(2019) 04 UK CK 0168

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 612 Of 2019

Shalini Vashisth And Another

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 155, 155(2), 482
Indian Penal Code, 1860 — Section 323, 427, 504, 506

Citation : (2019) 04 UK CK 0168

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Sandeep Kothari, Balvinder Singh

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for quashing/setting aside the impugned charge sheet dated 01.12.2018 as well as summoning order dated 14.02.2019, passed by the learned Chief Judicial Magistrate, Haridwar in Criminal Case No.1727 of 2019, State of Uttarakhand vs. Anmol Vashishth and another, under Sections 323, 504, 506, 427 of IPC, Police Station Kotwali Nagar Haridwar District and further to quash entire proceedings arising out of it.

2. Heard learned counsel for the petitioners and learned counsel for the State and perused the record.

3. Facts, necessary to resolve the controversy, briefly stated are that on 21.04.2018 a report was given by respondent no.2 at Police Station Kotwali Haridwar. According to it, the respondent no.2 had installed camera in his establishment for security purposes. On 13.04.2018 at about 11:40 p.m. the petitioners cut the wires of the cameras and destroyed them. Based on it a report of non cognizable offence under Sections 427 and 504 IPC was recorded.

Thereafter an application under Section 155(2) of the Code was moved by respondent no.2 before the learned Chief Judicial Magistrate, Haridwar on 18.09.2018 (Annexure 3). On this application under Section 155(2) of the Code a report was called from the concerned police station and vide order dated 24.09.2018 the Court directed an investigation into the matter and also directed that the investigating officer shall not arrest without obtaining a warrant (Annexure 4). In this matter after investigation, charge sheet under Sections 323, 504, 506 and 427 IPC has been filed in the Court. Based on it, the proceedings of Criminal Case No.1727 of 2019 were initiated in the court of learned Chief Judicial Magistrate, Haridwar and vide order dated 14.02.2019 petitioners have been summoned to answer the accusation under Sections 323, 504, 506 and 427 IPC.

4. Learned counsel for the petitioners has raised two issues

(i) direction for investigation in a non cognizable offence cannot be issued at the behest of the first informant. Such directions can only be issued on a request having been made by the investigating officer and (ii) in a subsequent application filed under Section 155(2) of the Code the facts were exaggerated in order to make offence cognizable.

5. Undoubtedly, in this matter investigation has been conducted on a report, which was lodged under Section 155 of the Code, which relates to a non cognizable case. It is a fact that police has not sought for the permission to investigate the report lodged under Section 155 of the Code. The respondent no.2, herein, had filed an application under Section 155 Sub Section 2 of the Code, seeking direction for the police to investigate the matter. Section 155 Sub Section 2 of the Code is extracted as under:-

"(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

This Section does not require that investigation may be ordered by the Magistrate only at the behest of the investigating officer. Sub Section 2 of Section 155 itself bars on the authority of the police officer to conduct the investigation in the non cognizable cases. According to this Sub Section police officer can investigate such matters only after having an order of investigation. In the instant case the informant has sought direction for investigation of the case of the non cognizable case, which was lodged by him. Therefore, there appears no illegality in the order dated 24.09.2018 passed by the learned Magistrate while ordering investigation in a report lodged under Section 155 of the Code, at the instance of the first informant.

6. It is true that in his application under Section 155(2) of the Code, the respondent no.2 had added some more actions on the part of the petitioners, which he had not earlier recorded in the report under Section 155 of the Code. It also appears from the perusal of the application under Section 155(2) of the Code filed by respondent no.2 that it discloses commission of cognizable offence

but the fact remains that no FIR under Section 154 of the Code was ever recorded in the case. The ultimate prayer in the application under Section 155 Sub Section 2 of the Code filed by respondent no.2 was for ordering an investigation in the report of non cognizable case lodged by him on 21.04.2018 and that is what was done by the investigating officer. The matter was investigated and subsequently charge sheet has been filed, on the report of non cognizable case number 8 of 2018. Merely because some more sections have been added after investigation does not vitiate the proceedings or actions.

7. In view of the above, this Court is of the view that there is no reason, which may warrant interference of the Court and the petition is liable to be dismissed at the stage of admission.

8. The petition under Section 482 of the Code is dismissed.