
(2010) 07 UK CK 0063
In the Uttarakhand High Court

Shiv Bachan Verma and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(2), 190(1), 200, 202
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2010) 07 UK CK 0063

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—By means of this petition, moved u/s 482 of The Code of Criminal Procedure, 1973 (for short, Cr.P.C.), the petitioners/applicants have sought quashing of the order dated 21.11.2009 passed by Chief Judicial Magistrate, Udham Singh Nagar as well as quashing of the entire proceedings of Criminal Case No. 50 of 2009, Abhay Singh Solanki v. Shiv Bachan Verma and Ors., relating to offences punishable under Sections 307, 323, 504, 506, 452 of The Indian Penal Code, (for short, the IPC).

2. Heard learned Counsel for the parties and perused the entire material available on file.

3. Brief facts of the case are that the respondent No. 2 Abhay Singh Solanki, an Advocate, moved an application u/s 156(3) of Cr.P.C., and got registered a crime/ FIR No. 578 of 2008 with P.S. Rudrapur, against the applicants in respect of offences punishable Under Sections 147, 148, 149, 323, 324, 504, 506, 452, 307 of IPC. After investigation, police submitted final report dated 3.12.2008 in the matter. Thereafter, the complainant filed a protest petition against the aforesaid final report on which the learned Chief Judicial Magistrate, Udham Singh Nagar vide his order-dated 21.3.2009 rejected the final report dated 3.12.2008 and directed the police for further investigation of the matter. Again, after further investigation, final report was submitted with the finding that no offence is said

to have been made out against any of the accused (present applicants). The Chief Judicial Magistrate, Udhampur Singh Nagar vide order dated 21.11.2009 again rejected the second final report and directed the I/c Inspector Kotwali Rudrapur for further investigation. Against the said order dated 21.11.2009, the applicants have preferred the present Code 482 application before this Court.

4. A counter affidavit has been filed by the State as well as on behalf of respondent No. 2 in which the averments made in Code 482 application have been denied.

5. Learned Counsel for the applicants argued that the order dated 21.11.2009 passed by Chief Judicial Magistrate, Udhampur Singh Nagar is not correct and is not sustainable in the eye of law. I do find force in the argument advanced by learned Counsel for the applicants. It is settled law that when such report that no offence is said to have been committed by the accused is placed before the Magistrate, he has the option of adopting one of the three courses i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). In a judgment rendered by Hon'ble Apex Court in the case of *Minu Kumari and Anr. v. State of Bihar and Ors.* reported in (2006) 2 SCC (Cri.) 310, it has been held in para 11 of the said judgment that:

11. When a report forwarded by the police to the Magistrate u/s 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can

ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also. See *India Carat (P) Ltd. v. State of Karnataka*

6. In view of the above quoted judgment, it is clear that the three courses are open before the Magistrate (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). In the present case, the learned Chief Judicial Magistrate by adopting third course, directed the police for further investigation. Hence, in view of judgment of Hon''ble Apex Court in case of *Minu Kumar (Supra)*, the order passed by the learned Chief Judicial Magistrate appears to be perfectly justified and as per law.

7. For the reasons recorded above, there is no force in the application. The application Code 482 is devoid of merit and is hereby dismissed. Interim order dated 2.07.2000 stands vacated.