
(2010) 06 UK CK 0057
In the Uttarakhand High Court

Shri K.N. Sharma, Smt. Shanti Devi and Sumit @ Amit (real name is Indra Chandra Sharma) APPELLANT

Vs

State of Uttaranchal and Smt. Kusum Bano RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 200, 202, 482
Penal Code, 1860 (IPC) — Section 323, 379, 420, 427, 452

Citation : (2010) 06 UK CK 0057

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, (for short of Cr.P.C), the petitioners have sought quashing of the proceedings of Criminal Case No. 1599 of 2004 Smt Kusum Bano v. K.N. Sharma and Ors., pending the court of Chief Judicial Magistrate, Nainital. The petitioners have further sought quashing of the order dated 02.03.2005, passed by Sessions Judge, Nainital, in Criminal Revision No. 12 of 2005, whereby the summoning order against the petitioners is affirmed by said court.

2. Brief facts of the case are that the respondent No. 2/complainant got lodged First Information Report on 28th of November 2003 with Police Station Haldwani, after obtaining orders u/s 156(3) of Cr.P.C., against the petitioners, relating to offences punishable u/s 452, 323, 504, 506, 427, 467, 468, 471, 420 I.P.C., which was registered as Crime No. 5266 of 2003. After investigation the police submitted final report No. 26 of 2004. The complainant filed a protest petition against the final report on which the Magistrate treated the same as criminal complaint and recorded statement of PW1 Kusum Bano u/s 200 of Cr.P.C and that of the witnesses PW2 Dheeru Bhatt and PW3 Krishna u/s 202 of Cr.P.C. Thereafter, the Chief Judicial Magistrate, Nainital, vide impugned order dated 02.02.2005 summoned the petitioners to face the trial, in respect of offences

punishable u/s 452, 323, 504, 506 I.P.C. The petitioners preferred revision against the summoning order, which was dismissed as against the present petitioners but the same was allowed so far as the daughters of petitioners K.N. Sharma were concerned, as their names were not specified.

3. Learned Counsel for the petitioners submitted that the impugned Criminal proceedings are counter blast to the First Information Report lodged by petitioner No. 2 Shanti Devi against the respondent No. 2, her husband and others, relating to offences punishable u/s 379, 427, 504, 506 I.P.C., which was registered as Crime No. 5110 of 2003. Perusal of said First Information Report also discloses that the petitioner No. 2 also got lodged First Information Report after obtaining order u/s 156(3) of Cr.P.C. It is alleged in the First Information Report lodged by the petitioner No. 2 against the respondent No. 2, her husband and others that they have demolished the construction raised by the petitioners in the plot purchased by them. It is also pleaded that the civil suit is already pending between the parties before civil Judge (Senior Division) Nainital.

4. There is no sale deed/registered sale deed showing that the petitioners have purchased the plot which was in possession of the respondent No. 2 and others, regarding which petitioners have alleged in their F.I.R that they got the possession after making payment of Rs. 50,000/- by a cheque. Even otherwise, the disputes raised by the petitioners in the present petition are factual in nature, which can be examined only by the trial court. It is not desirable on the part of this Court to form any opinion either way on the basis of the incomplete evidence.

5. Having considered submissions of learned Counsel for the petitioners, in the facts and circumstances of the case, this Court is not inclined to interfere with the trial of the Criminal Case No. 1599 of 2004 Kusum Bano v. K.N. Sharma and Ors.

6. Therefore, the petition u/s 482 of Cr.P.C is dismissed, without expressing any opinion as to final merits of this case. It is further observed that if the petitioners surrender before the court concerned, their bail application shall be heard and disposed of without unreasonable delay. The interim order dated 30th of September 2005 stands automatically vacated.