
(2011) 11 UK CK 0110

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No.664 of 2006

Smt. Ajeejan and others

APPELLANT

Vs

State of Uttaranchal and another

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 504

Citation : (2011) 11 UK CK 0110

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesh Kumar Gupta, J.—By way of this petition moved u/s 482 Cr.P.C., the prayer has been made to quash the order of cognizance dated 18.3.2006 passed by the Judicial Magistrate, Dehradun in criminal Complaint Case No.2389 of 2006 titled as Sharafat Ali Vs. Ali Hasan and others. The said order of cognizance was passed by the Magistrate asking all the nine petitioners to stand for trial for the offence of Sections 147, 148, 323, 504 and 506 IPC. It has also been prayed to quash the entire proceedings of the said criminal complaint case.

2. Having heard the learned counsel for the parties, it appears that both are neighbours and there happened to be some dispute upon the agricultural land Khasra No.1587 (Ka) and 1587 (Gha), situated in village Sabhawala, Pargana Pachwa Doon, Tehsil Vikasnagar, District Dehradun. So a civil suit no.238/2005, pertaining to land no.1587 (Ka) was filed by Sri Sukkar, the father of respondent no.2 on dated 3.5.2005 in the court of Civil Judge (J.D.) Dehradun, seeking prohibitory injunction upon the said land. The relief was sought against five defendants, who are the petitioners in the case.

3. Another suit no.311/2005, pertaining to land No.1587 (Gha) was filed by Smt. Ajeejan (petitioner no.1) in the court of Civil Judge (S.D.) Dehradun against Sri Sukkar (father of respondent no.2) and four others. In that suit, ex parte ad

interim prohibitory injunction was issued on 27.5.2005.

4. It has been argued that no sooner did Sri Sharafat Ali S/o Sri Sukkar got notice of the said ad interim injunction against him and his family, he filed the impugned complaint in the court of the Magistrate on 27.6.2005 against all the petitioners, raising allegations of Sections 147, 148, 149, 323, 504 and 506 IPC. The incident was narrated seven months back on dated 12.11.2004 at about 7:30 PM. Sri Sharafat Ali stated in his complaint that on the relevant date and time, when he was fencing his agricultural field, along with his mother Hasina, sisters in law Farida and Nasreem, besides his brother Riyasat, all the accused persons came there and began to uproot the fencing. When resisted, all the accused persons hurled filthy abuses to insult them and left the spot after giving extensive beating to them.

5. Having considered the statement of the complainant u/s 200 Cr.P.C. and that of the statements of witnesses Nasreen, Riyasat, Smt. Farida (all family members of the complainant), recorded after 2? months of filing of the complaint, on dated 13.9.2005, the Magistrate took the cognizance of the matter on dated 18.3.2006 and issued the summons to the petitioners, as stated above.

6. It has been argued on behalf of the petitioners that this complaint was totally malicious, based on a frivolous and fictitious ground, just to avenge the petitioners, inasmuch as, the ad interim ex parte injunction had been issued in their favour against the complainant and that the complainant has roped the entire family.

7. On the other hand, learned counsel of respondent no.2 (Sharafat Ali) has argued that the Magistrate has considered the statements of the injured witnesses and their medical reports and only then, he has passed the impugned order of cognizance, as such, no illegality or irregularity has been committed by the Magistrate by passing the impugned order.

8. Having given my anxious consideration upon the entire facts and scenario of the case, it is pertinent to note that the incident, as has been narrated, occurred at an agricultural field on 12.11.2004 at 7:30 PM, and this time, in the month of November, is a chilly weather. It was not feasible that the complainant, along with his mother and two sisters in law, was busy in fencing in the late evening of that cold winter. Fortiori, it was also not feasible that all the accused persons, including three ladies, i.e. Smt. Ajeekan, Smt. Shamina and Smt. Hanifa, along with their husbands, went at the spot at such a chilly winter late evening and gave extensive beating to the petitioners.

9. In view of the above, this petition has merits and deserves acceptance. Petition is, accordingly, allowed. Impugned order of cognizance dated 18.3.2006 passed in criminal complaint case no.2389 of 2006, as aforementioned, is hereby quashed, along with the complaint itself.